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federal register

TUESDAY, SEPTEMBER 19, 1978

highlights

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

federal register

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(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

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NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

[Last Listing: September 13, 1978]

H.J. Res. 773 ..... Pub. L. 95-364
Authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning September 17, 1978, as "National Port Week." (Sept. 15, 1978; 92 Stat. 598) Price: $.50.

H.R. 8342 ..... Pub. L. 95-365
To amend title 5, United States Code, to provide for the application of local withholding taxes to Federal employees who are residents of such locality. (Sept. 15, 1978; 92 Stat. 599) Price: $.50.

H.R. 8771 ..... Pub. L. 95-366
To amend title 5, United States Code, to authorize the Civil Service Commission to comply with the terms of a court decree, order, or property settlement in connection with the divorce, annulment, or legal separation of a Federal employee who is under the civil service retirement system, and for other purposes. (Sept. 15, 1978; 92 Stat. 600) Price: $.50.

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Title 3—The President

PROCLAMATION 4596

National Port Week, 1978

By the President of the United States of America

A Proclamation

Since the days of its early settlement, the United States has been dependent on water transportation for its trade. Populations tended to locate around harbors, which rapidly became the economic centers of the New World. Now there are some 170 commercial seaports in this country, as well as numerous inland ports on our navigable inland waterways. The result has been the creation of a network of ocean and inland ports that includes many of the country's most important centers of industry, distribution, finance, and education.

Ports provide the vital link between land and water carriers. The port industry contributes enormously to the Nation's economy. It facilitates international trade, employs significant numbers of people, provides substantial personal and business incomes, and generates revenues for State and local governments.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, in order to remind Americans of the importance of the port industry of the United States to our national life, do hereby designate the seven calendar days beginning September 17, 1978, as "National Port Week." I invite the Governors of the several States, the chief officials of local governments, and the people of the United States to observe such week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, 1978, in the year of our Lord nineteen hundred seventy-eight, and of the Independence of the United States the two hundred and third.

Jimmy Carter

[FR Doc. 78-26421 Filed 9-15-78; 3:25 pm]

[3195-01]

REORGANIZATION PLAN NO. 3 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 19, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. Federal Emergency Management Agency

Section 101. Establishment of the Federal Emergency Management Agency.

There is hereby established as an independent establishment in the Executive Branch, the Federal Emergency Management Agency (the "Agency").

Section 102. The Director.

The Agency shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level II of the Executive Schedule.

Section 103. The Deputy Director.

There shall be within the Agency a Deputy Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

Section 104. Associate Directors.

There shall be within the Agency not more than four Associate Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, two of whom shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule, one of whom shall be compensated at the rate now or hereafter prescribed by law for level V of the Executive Schedule and one of whom shall be compensated at the rate now or hereafter prescribed by law for GS-18 of the General Schedule. The Associate Directors shall perform such functions as the Director may from time to time prescribe.

Section 105. Regional Directors.

There shall be within the Agency ten regional directors who shall be appointed by the Director in the excepted service and shall be compensated at the rate now or hereafter prescribed by law for GS-16 of the General Schedule.

Section 106. Performance of Functions.

The Director may establish bureaus, offices, divisions, and other units within the Agency. The Director may from time to time make provision for the

performance of any function of the Director by any officer, employee, or unit of the Agency.

PART II. Transfer of Functions

Section 201. Fire Prevention.

There are hereby transferred to the Director all functions vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration, and the Superintendent of the National Academy for Fire Prevention and Control pursuant to the Federal Fire Prevention and Control Act of 1974, as amended, (15 U.S.C. 2201 through 2219); exclusive of the functions set forth at Sections 18 and 23 of the Federal Fire Prevention and Control Act (15 U.S.C. 278(f) and 1511).

Section 202. Flood and Other Matters.

There are hereby transferred to the Director all functions vested in the Secretary of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, (42 U.S.C. 2414 and 42 U.S.C. 4001 through 4128), and Section 1 of the National Insurance Development Act of 1975, as amended, (89 Stat. 68).

Section 203. Emergency Broadcast System.

There are hereby transferred to the Director all functions concerning the Emergency Broadcast System, which were transferred to the President and all such functions transferred to the Secretary of Commerce, by Reorganization Plan Number 1.

PART III. General Provisions

Section 301. Transfer and Abolishment of Agencies and Officers.

The National Fire Prevention and Control Administration and the National Academy for Fire Prevention and Control and the positions of Administrator of said Administration and Superintendent of said Academy are hereby transferred to the Agency. The position of Deputy Administrator of said Administration (established by 15 U.S.C. 2204(c)) is hereby abolished.

Section 302. Incidental Transfers.

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

Section 303. Interim Officers.

The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch to which they were appointed by and with the advice and consent of the Senate, to act as Director, Deputy Director, and Associate Directors of the Agency, until those offices are for the first time filled pursuant to the provisions of this

Reorganization Plan or by recess appointment, as the case may be. The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

Section 304. Effective Date.

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

[FR Doc. 78-26463 Filed 9-18-78; 8:45 am]

LEGISLATIVE HISTORY:

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 25: June 19, Presidential message transmitting Reorganization Plan No. 3 of 1978 to Congress. (Also printed as House Document No. 95-356.)

HOUSE REPORT No. 95-1523 accompanying H. Res. 1242 (Comm. on Government Operations).

SENATE REPORT No. 95-1141 accompanying S. Res. 489 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

June 19, H. Res. 1242, resolution of disapproval, introduced in House and referred to Committee on Government Operations.

June 22, S. Res. 489, resolution of disapproval, introduced in Senate and referred to Committee on Governmental Affairs.

Sept. 14, H.Res. 1242 rejected by House.

rules and regulations

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Temporary Boards and Commissions

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment continues the exception under Schedule A of all positions on the staff of the Marine Mammal Commission, with the provision that this authority is not to exceed September 30, 1981.

EFFECTIVE DATE: September 1, 1978

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3199(o)(1) is amended as set out below:

§ 213.3199 Temporary boards and commissions.

* * * * *

(o) *Marine Mammal Commission.*

(1) Not to exceed September 30, 1981, all positions on the staff of the Commission.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-26211 Filed 9-18-78; 8:45 am]

[1505-01]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amdt. 41]

PART 250—DONATION OF FOODS FOR USE IN UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

Miscellaneous Amendments

Correction

In FR Doc. 78-24718 appearing at page 39070 in the issue for Friday, September 1, 1978, in the third column of page 39072, eight lines from the top, ". . . agencies under § 1250.3 (n-3) . . ." should have read ". . . agencies under § 250.3 (n-3) . . .".

[3410-30]

[Amdt. No. 135]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Retroactive Relief

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule, which applies only to members of the plaintiff class in *Aiken* v. *Obledo*, 442 F. Supp. 628 (E.D. Cal. 1977), establishes by regulation procedures for granting retroactive food stamp benefits to households eligible for retroactive relief under the court order issued in *Aiken*. In addition to the methods specified in a February 3, 1978, telegram issued to State agencies, the regulation provides that, at State agency option, households may receive their entire entitlement to retroactive benefits in the form of a lump sum of food coupons. Also, the regulation will require that State agencies provide retroactive benefits based on current food stamp allotment tables to all members of the *Aiken* class who have not already received or begun to receive such benefits based on previously effective allotment tables. These additional procedures will speed delivery of benefits to the plaintiff class and will greatly simplify benefit calculation, reconciliation of issuance documents and reporting for State agencies.

EFFECTIVE DATE: September 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Susan D. McAndrew, Acting Chief, Program Standards Branch, Program Development Division, Office of Family Nutrition Programs, 500 12th Street SW., Washington, D.C. 20250—202-447-8918.

SUPPLEMENTAL INFORMATION: Court ordered procedures for granting retroactive food stamp benefits to members of the plaintiff class in *Aiken* whose benefits were unlawfuly denied or delayed were published at 43 FR 6286 et seq. (February 14, 1978). These procedures, sent by telegram dated February 3, 1978, to all State Welfare Commissioners and all FNS Regional Administrators, required that State agencies issue retroactive benefits to *Aiken* class members as follows: (1) a currently eligible household will receive its food coupon allotment at no or reduced cost until its retroactive entitlement is exhausted; (2) a household currently eligible at zero purchase will receive up to 150 percent of its food coupon allotment until its retroactive entitlement is exhausted; or (3) a currently ineligible household will receive up to 100 percent of the food coupon allotment for its household size at no cost until its retroactive entitlement is exhausted.

In addition, the telegram set out requirements for notification of potential class members, for processing claims filed under the court order and for reporting information on applicants for benefits and the dollar amount of benefits paid out.

State agencies now report technical problems in complying with the requirement to provide lost benefits in the form of food coupons to households currently ineligible for participa-

tion and with computing such benefits with the food coupon allotment tables in effect at the time benefits were denied or delayed. Also, State agencies are currently devoting considerable staff time and administrative funds in preparing for the implementation of the Food Stamp Act of 1977. It is felt that a prolonged period of application processing and benefit delivery by the monthly adjustment method will adversely affect States' ability to orderly implement the new Act.

Massachusetts and Maine have highlighted the difficulties associated with issuance of retroactive benefits to ineligible households.[1] Both States have automated systems for issuance and reconciliation of Authorization to Purchase (ATP) cards. These systems are programed to issue ATP cards only in amounts authorized by the current issuance tables (and up to 150 percent of such amounts as required by 7 CFR 271.1(q)(5)(iii)). Issuance of ATP cards in amounts reflecting noncurrent coupon allotments requires hand preparation of these cards and further requires hand reconciliation once they are transacted. This manual process is costly, time consuming and inherently error-prone. Massachusetts is significantly adversely affected by the requirement to grant retroactive benefits to ineligible households, as its issuance system is automated to such an extent that there is no staff available to conduct a hand issuance and reconciliation operation. The only alternative is a costly rewrite of the computer program which could take months to implement.

Both States have suggested that use of the current food coupon allotment tables to issue lost benefits to ineligible households would enable States to use their current automatic data processing (ADP) systems to issue and reconcile ATP cards issued under the *Aiken* order. Thus the costly manual system or extensive reprograming could be avoided. Benefit calculation could be simplified as the worker could use one issuance table rather than one or more of the seven which have been issued since August 1974.

The Department agrees that State agencies will encounter problems issuing lost benefits to ineligible households. The degree of difficulty experienced will depend on the ADP capabilities of the State agency, the availability of staff to conduct a manual operation, and the number of claims from currently ineligible households. Virtually all of the State and local agencies that use ADP systems to issue and reconcile ATP cards are programed to authorize only the current food coupon allotment tables. As the *Aiken* order covers certification actions dating back as early as August 1974, we can anticipate that a significant percentage of the plaintiff class may not be currently eligible for program benefits. The Department feels that the increased *benefit* costs of paying retroactived benefits according to the current tables will be more than offset by savings in *administrative* costs that will accrue through use of cost effective ADP systems. It is also evident that, in those States which have already paid or begun to pay retroactive benefits to individual households based on previously effective allotment tables, a requirement that the States seek out such households and recalculate their retroactive benefits based on current allotment tables would constitute a heavy and unwarranted administrative burden on the States, since they have already provided the affected households with the precise amount in benefits which were lost at the time of denial or delay. Accordingly, after receiving court approval, the Department has adopted in this final rule the requirement that current allotment tables be used in calculating the retroactive benefits to be paid to *Aiken* class members who have not already received or begun to receive such benefits based on allotment tables in effect at the time benefits were lost.

The Vermont State agency has suggested, for purposes of the *Aiken* court order only, that retroactive benefits be paid to all households, whether currently eligible or ineligible, in one lump sum of food coupons. It was felt that this method would speed delivery of benefits to the plaintiff class, improve accountability over *Aiken* issuances, and allow States to complete action on claims made under *Aiken* will in advance of implementation of the Food Stamp Act of 1977. In response to an informal poll, many State agencies reported that they would adopt the lump sum method if offered this option in lieu of the monthy adjustment method.

With the approval of the *Aiken* court, this suggestion has also been adopted in the final rule. We feel the lump sum restoration method, together with the requirement to compute benefits in accordance with the current allotment tables, will result in significant cost savings to State and local governments and will also be beneficial to the members of the plaintiff class. The provisions of the final regulation are discussed in detail below.

The regulation continues the restoration methods mandated by the February 3, 1978, telegram; however, an optional provision allows State agencies to pay out retroactive benefits to all households, whether eligible or ineligible, in the form of a lump sum of food coupons. Currently eligible households will also receive their regular food coupon allotments. Adoption of the lump sum option is not mandated, as some State agencies might not be able to timely implement this method due to staff resources being assigned to implementation of the 1977 Act or lengthy State APA procedures. Regardless of the method used to restore benefits, the regulation requires that the State agency use the current food coupon allotment tables to determine the amount of retroactive benefits owed to a household. As noted above, the regulation does not result in any further entitlement to retroactive benefits being provided to households who have already received or begun to receive benefits under the *Aiken* order.

The regulation requires preparation of a special issuance document which is specifically identifiable as relating to the *Aiken* order. In a machine (ATP) system, any number of ATP cards may be issued to set up a lump sum issuance of coupons to a household. For example, a single person household entitled to 2 month's retroactive benefits could receive a single ATP authorizing issuance of $108 in food coupons or it could receive two ATP cards, each authorizing issuance of $54 in food coupons. The State agency may choose the most administratively feasible method based on its operational capabilities. In a manual system (HIR card), the State agency may prepare an HIR card for each application approved or it may enter each issuance on a single HIR card. Issuance of food coupons authorized by these special documents are to be reported as regularly authorized issuances on Form FNS-250, Food Coupon Accountability Report, and other related accountability reports. Separate identification of *Aiken* issuance will facilitate preparation of the report on *Aiken* activities due November 1, 1978.

When a household has filed more than one application for retroactive *Aiken* benefits, the State agency may restore benefits for each application as it is approved, restore the full amount only after all applications have been approved, or restore benefits for any number of applications as they are approved. It is up to the State agency to detemine which method will be the most feasible and cost effective in terms of its own operation. State agencies that adopt the lump sum restoration method must alert issuance agents that special issuance documents are being issued as unusual coupon allotments and transactions of multiple ATP cards are authorized.

[1] Under current rules, ineligible households entitled to retroactive benefits cannot have these benefits restored until they again become eligible for program benefits. However, under the *Aiken* order, such relief to ineligible households was required.

To ease the transition to the lump sum method, the regulation allows the State agency to continue to use the monthly adjustment method for households which have already begun to receive *Aiken* benefits. Even if a State decides to issue the remaining entitlement as a lump sum, there is no need to recompute the amount of benefits owing. Further, the regulation allows State agencies to use the monthly adjustment method to restore benefits if a household so requests. For example, a household may state that it is unable to safeguard a larger than normal food coupon allotment.

It is the policy of this Department to give the public and State agencies an opportunity to comment on regulatory changes before issuance. However, because of the need for timely implementation to benefit both claimants under *Aiken* and State agencies, the Department has decided that it is contrary to the public interest to give notice of proposed rulemaking. As the only *mandatory* procedural change is a simplification of the benefit calculation, implementation of the amendment is set at 30 days from the date of publication in the FEDERAL REGISTER. No time is set for implementation of the *optional* procedures; however, we expect that States wishing to use them will implement as soon as possible to gain the maximum benefit.

Accordingly, 7 CFR Part 271 is amended by adding a new subparagraph to §271.1(q) as follows:

* * * * *

§271.1 General terms and conditions for State agencies.

* * * * *

(q) *Restoration of lost benefits.* * * *

* * * * *

(8) *Restoration of benefits under the Aiken, et al. v. Obledo, et al. court order.* (i) *Method of restoration.* Members of the class eligible to receive retroactive relief under the terms of the court order issued in *Aiken, et al. v. Obledo, et al.* shall receive retroactive food stamp benefits as follows:

(*a*) A currently eligible household shall receive its food coupon allotment at no or reduced cost until its retroactive entitlement is exhausted;

(*b*) A currently eligible household participating with no purchase requirement shall receive up to 150 percent of its food coupon allotment until its retroactive entitlement is exhausted;

(*c*) A currently ineligible household shall receive up to 100 percent of the food coupon allotment for its household size until its retroactive entitlement is exhausted; or

(*d*) At the option of the State agency, all households, whether eligible or ineligible, shall receive their entire retroactive entitlement in the form of a lump sum of food coupons. Eligible households will also receive their regular food coupon allotment.

(ii) *Computation of entitlement.* Regardless of the method used to restore retroactive benefits due under the *Aiken* order, the State agency shall use the current monthly food coupon allotment tables to determine the amount of retroactive benefits to be paid the household. Households which have already received or begun to receive retroactive benefits computed with the issuance tables in effect at the time of the delay or denial of benefits are not entitled to receive any additional benefits under this regulation.

(iii) *Preparation of issuance documents.* A special issuance document, either an ATP in a machine system or an HIR card in a manual system, shall be prepared for lump sum restoration under *Aiken.* The document shall be coded *"Aiken v. USDA"* either in print or with the appropriate computer code. In a machine system, any number of ATP cards may be issued to effect the issuance of a lump sum of coupons. In a manual system, one HIR card may be used to record issuances from any number of applications filed by a household. These documents shall be considered as regular authorized issuances for the Form FNS-250, Food Coupon Accountability Report, and other related accountability reports. Because the State agency must file a summary report of benefits restored under *Aiken,* a separate monthly tally should be kept so that this report can be prepared.

(iv) *Multiple applications for benefits.* If a household has filed more than one application for retroactive *Aiken* benefits, the State agency may do any one of the following: Restore the full amount for each application as it is approved; restore the full amount only after all applications have been approved; or restore the full amount for any number of applications as they are approved.

(v) *Issuance agent alert.* The State agency shall alert issuance agents that special issuance documents are being issued and that unusual coupon allotments and transactions of multiple ATP cards are authorized.

(vi) *Transition to lump sum method.* If a State agency decides to use the lump sum restoration method, it may do so for all households at the same time, or it may continue to make monthly adjustments for households which have already begun to receive restoration of lost benefits under *Aiken.* The State agency may, after adopting the lump sum method, restore *Aiken* benefits to a household by the monthly adjustment method only if it so requests.

(vii) *Implementation.* This regulation shall be implemented no later than 30 days after the date of publication in the FEDERAL REGISTER.

(78 Stat. 703, as amended (7 U.S.C. 2011-2026).)

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: August 1, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-26367 Filed 9-18-78; 8:45 am]

[3410-02]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Regulation 163]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Minimum Size Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh California-Arizona lemons shipped to market to be at least 1.82 inches in diameter (size 235's in cartons). This requirement is needed to provide orderly marketing in the interest of producers and consumers.

EFFECTIVE DATES: September 24, 1978, through September 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: on August 28, 1978, notice was published in the FEDERAL REGISTER (43 FR 38411) inviting written comments on proposed minimum diameter requirements for shipments of 1978-79 season lemons, under marketing order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. None were received. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Shipments of lemons from the production area are now in progress and such shipments are regulated by size through September 23, 1978, under lemon regulation 111 (42 FR 48869), which requires such lemons to be at least 1.82 inches in diameter. This regulation, which would become effective September 24, 1978, would continue in effect this size requirement. The volume and size composition of the lemon crop in California and Arizona is such that ample supplies of the more desireable sizes are available to satisfy the demand in domestic fresh markets. The regulation is designed to permit shipment of ample supplies of lemons of acceptable sizes, maturity, and juice content in the interest of both growers and consumers, and is necessary to maintain orderly marketing conditions and provide consumer satisfaction. Sales opportunities for smaller fresh lemons in domestic markets are quite limited, as they have relatively low juice yields. Lemons failing to meet the minimum size requirement could be shipped to fresh export markets, left on the trees to attain further growth, or utilized in processing. The regulation is consistent with the objective of the act of promoting orderly marketing and protecting the interest of consumers.

After consideration of all relevant matter presented, including the proposal in the notice and other available information, it is hereby found that the following regulation is in accordance with this marketing agreement and order and will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation unitl 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning this regulation was published in the FEDERAL REGISTER, and no objection to the regulation or its effective date was received; (2) the regulatory provisions are the same as those contained in the notice and are currently in effect through September 23, 1978; and (3) compliance with this regulation will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

§ 910.463 Lemon regulation 163.

Order. (a) From September 24, 1978, through September 22, 1979, no handler shall handle any lemons grown in district 1, district 2, or district 3 which are of a size smaller than 1.82 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the lemons in any type of container may measure smaller than 1.82 inches in diameter.

(b) As used in this section, "handle," "handler," "district," "district 2," and "district 3" shall have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated September 13 1978, to become effective September 24, 1978.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-26282 Filed 9-18-78; 8:45 am]

[6351-01]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 8—EXCHANGE PROCEDURES FOR DISCIPLINARY, SUMMARY, AND MEMBERSHIP DENIAL ACTIONS

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission has adopted part 8 of its regulations under the Commodity Exchange Act, as amended. Part 8 contains minimum standards to be followed by each exchange in establishing procedures for enforcing its rules and for taking membership responsibility actions. Among other things, these regulations prescribe requirements for commencing investigations of possible rule violations, establish fair disciplinary procedures, and specify the records to be kept by an exchange in carrying out its rule enforcement responsibilities. A separate subpart has been reserved for rules which are expected to be adopted on the subject of membership denial actions.

EFFECTIVE DATE: Part 8 shall become effective on January 17, 1979.

FOR FURTHER INFORMATION CONTACT:

Barbara R. Stern, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone 202-254-5208.

SUPPLEMENTARY INFORMATION: On February 25, 1977, The Commission published proposed regulations governing the procedures to be followed by an exchange in taking disciplinary actions for possible rule violations within the disciplinary jurisdiction of the exchange.[1] The Commission indicated that the rules were intended to accomplish three objectives: (1) To promote the prompt and thorough investigation and prosecution of exchange rule violations; (2) to insure that disciplinary proceedings are conducted fairly; and (3) to provide sufficient records to facilitate the Commission's rule enforcement inspections and Commission review of specific exchange disciplinary and access denial actions conducted pursuant to section 8c of the Commodity Exchange Act, as amended, 7 U.S.C. 1 et seq. (1976.[2]

The Commission received comments from the 10 exchanges which have been designated as contract markets for various commodities under section 5 of the Act and from one futures commission merchant. After carefully considering all of the comments, the Commission has determined that the regulations should be adopted, but with certain modifications. Among these are changes in wording and organization which are designed to make the regulations clearer and easier to use. Other revisions generally afford an exchange wider latitude in establishing procedures for adjudicating possible rule violations. In addition, the requirements under subpart C have been amended to provide for procedures that are more appropriate to those cases where summary action is permitted. The Commission has also determined that the prescribed disciplinary procedures should not be applicable to membership denial actions. The Commission intends, however, to adopt separate rules governing membership denial actions which will become subpart D of this part.

The comments and amendments to Part 8 are included in the discussion below, which also provides an overview of the adopted regulations. Explanation has been provided for those sections which are new or which, judging from the comments received appear to have generated special concern. The discussion is not intended to cover all of the details of the adopted regulations.

COMMENTS ON AND REVISIONS OF PART 8

ORGANIZATION

Part 8 is divided into four subparts. Subpart A contains general provisions which set forth the scope of the rules and define terms as used in Part 8. Subpart B contains the disciplinary procedure which is to be utilized by an exchange in investigating and adjudicating possible rule violations within the exchange's disciplinary jurisdiction. This subpart provides specific

[1] 42 FR 11142 (Feb. 25, 1977).
[2] Id.

procedures for certain of the general requirements now contained in §§ 1.51(a) (4), (5), and (7) of the Commission's regulations, 17 CFR §§1.51(a) (4), (5), and (7) (1977). Subpart C contains procedures which may be used for taking summary action in specified circumstances. One type of summary procedure is designed to permit an exchange to take immediate action in situations where time is a critical factor. A second kind of summary action may be used for very minor violations where a full proceeding would be unduly burdensome and seems inappropriate in view of the violation and sanction. Subpart D has been reserved for regulations concerning membership denial actions, which are expected to be adopted at a later date.

GENERAL COMMENTS

The comments received from the exchanges generally reflected a view that the Commission's proposed regulations were overly complex and formal. Many exchanges argued that uniformity of procedures should not be a goal in and of itself and that each exchange should be given more discretion to fashion a disciplinary procedure tailored to its particular needs. One exchange suggested that the Commission should merely require each exchange to adopt rules requiring prompt and fair handling of member disciplinary procedures as an alternative to promulgating a set of regulations applicable to all 10 exchanges. Another exchange suggested that the Commission adopt an exemptive regulation which would permit the Commission to waive strict application of its rules whenever an exchange has demonstrated substantial compliance with the general principles of rule enforcement.

Part 8 was proposed, in part, in response to staff findings amd recommendations based on observations made during the Commission's contract market rule enforcement inspections. The proposed regulations were intended to correct deficiencies, some of which were severe, in existing exchange rule enforcement programs. The Commission has continued its program of rule enforcement inspections and its recent experience reaffirms the earlier conclusion that minimum requirements are essential for effective regulation. Accordingly, the Commission has determined that most of the requirements in the proposed regulations, particularly those pertaining to investigations and recordkeeping, should be adopted.

At the time Part 8 was proposed the Commission intended to amend § 1.51 to delete therefrom any provision which duplicated or overlapped with the part 8 regulations as adopted. Since part 8 is intended to amplify the requirements of § 1.51 and not to supplant them, the Commission has determined not to amend § 1.51.

The Commission agrees that uniformity of procedures should not be and is not the primary goal of the adopted regulations. The adopted regulations have been designed to provide each exchange with as much flexibility as possible. An exchange is free to establish procedures within the regulatory framework. It is emphasized that the adopted regulations set forth minimum standards to be followed by an exchange in establishing a disciplinary procedure. As is stated in § 8.01, the regulations do not preclude an exchange from adopting rules containing additional standards of practice and procedure consistent with the regulations, and some exchanges already have such rules. One exchange, for example, provides parties under investigation with notice of the investigation although the adopted regulations do not require notice until a person is charged with a violation. The examples below further demonstrate the flexibility of part 8, particulary in the adjudicatory stage of the disciplinary procedure. Many exchanges objected to the proposed mandatory default provisions where a respondent failed to deny charges or to request a hearing. The adopted regulations permit an exchange that wishes to do so to conduct a hearing on charges of a rule violation whether or not one is requested by a person charged with the violation. (See §§ 8.14 and 8.15.) In addition, under subpart C providing for summary action, an exchange may establish a procedure for imposing sanctions for violations of rules of decorum, submission of records, or other similar activities. (See § 8.27.) This is in contrast to the proposed regulations, which would have required an exchange to provide an opportunity for a full hearing and appeal, no matter how minor the violation or sanction.

One exchange was critical of the Commission's statement that the regulations had been drafted to permit exchanges to retain a "certain" amount of discretion in handling their rule enforcement obligations. This exchange emphasized the need to be able to judge disciplinary matters within its jurisdiction on the facts before it. The Commission did not intend by using the work "certain" to imply that an exchange's discretion was to be severely limited. Each exchange is clearly responsible for its own self-regulation. For example, an exchange's enforcement staff may close an investigation if it determines that no reasonable basis exists for finding a violation and the disciplinary committee may choose not to charge a person with a rule violation even though the enforcement staff has concluded that a reasonable basis exists for finding such violation. (See §§ 8.07 and 8.09.) These two provisions are indicative of the wide discretion given an exchange under the adopted regulations. Moreover, they demonstrate that exchange discretion is not limited merely to procedural matters involved in adjudicating possible violations, but that it goes to what is perhaps the essential aspect of rule enforcement by authorizing each exchange to determine which cases should or should not be adjudicated.[3] Prosecutorial discretion, however, should not and cannot relieve an exchange of the statutory obligation to enforce its rules as part of its self-regulatory responsibilities.

One exchange asserted that the Commission's regulations will significantly increase the costs of its rule enforcement program. The commenter appeared to be primarily concerned with the obligation to complete investigations within the time period prescribed in the proposed regulations and to submit periodic status reports to the Commission on cases where longer investigations are necessary. As will be discussed further, the Commission has extended the period for completing investigations from 3 months to 4 and has deleted the proposed periodic status reporting requirement. More importantly, however, the Commission believes that an adequate enforcement staff which can effectively police trading practices and promptly investigate potential violations is critical to the protection of the public interest. As the Commission states in guideline II:

> The mere fact that an exchange, because of its method of financing, does not have sufficient resources to fund an adequate enforcement program does not justify its not having an adequate program. It is the obligation of every contract market to make whatever modifications in its self-financing scheme as are necessary to enable it to adequately fund an enforcement program which will protect the public interest.[4]

The Commission also believes that even though the new hearing and recordkeeping requirements may increase the cost of disciplinary actions, the need for fundamental fairness and complete records outweighs the burden any such additional costs may impose on an exchange.

Finally, three exchanges requested that the Commission hold hearings before adopting final regulations. For

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[3] The fact that these decisions will be subject to Commission oversight both during rule enforcement inspections and when the Commission reviews records of exchange actions required to be forwarded to the Commission does not mimimize the breadth of an exchange's discretion in this area.

[4] Contract market rule enforcement program, guideline II, May 13, 1975, CCH Com. Fut. L. Rep., par. 6430.

several reasons, the Commission has determined that public hearings on its proposals are not necessary. Ample opportunity to comment on the proposed regulations has already been provided. The formal comment period in the FEDERAL REGISTER was 60 days; the Commission also accepted and considered comments submitted after that period by exchanges that were unable to meet that deadline. In addition, all of the exchanges have expressed their views and the Commission has carefully evaluated their suggestions and comments. In many cases the regulations as adopted reflect changes recommended by the exchanges. Finally, the Commission emphasizes that the adopted regulations do not embody any startling or novel concepts and in many ways codify the views previously expressed by the Commission.[5]

MISCELLANEOUS COMMENTS

The Commission received several comments concerning the proposed regulations published as part 9,[6] which will implement the notice requirement in section 8c of the act concerning reporting by an exchange of expulsions, suspensions, disciplinary actions, and access denial actions. These comments will be considered in conjunction with comments received on part 9 before final regulations thereunder are adopted.

One exchange indicated that it did not consider as binding a statement which appeared only in the preamble to and not in the text of the regulations. The Commission wishes to make clear that the narrative portion of the FEDERAL REGISTER notice announcing the proposal or adoption of regulations contains the Commission's views on the purpose and meaning of its rules. It is offered as further guidance and explanation of the requirements of a regulation and, as such, should be accorded significant weight by affected persons. Failure to adhere to a Commission interpretation may result in enforcement action for violation of the regulation.

SUBPART A—GENERAL PROVISIONS

SCOPE OF RULES

As has been discussed in great detail above, many exchanges argued in their comments that part 8 should give an exchange more discretion to fashion a disciplinary system tailored to its particular needs. In response to these comments, § 8.01 as adopted gives an exchange the authority to adopt rules and practices in addition to those required by part 8, so long as they are not inconsistent with these regulations.

IMPLEMENTING EXCHANGE RULES

One exchange commented that there was little need for an exchange to adopt and promulgate rules of its own when it was required by law to follow the Commission's standards in the part 8 regulations, many of which are detailed enough to stand alone. The Commission believes that this comment has merit with respect to certain of the regulations. It has therefore added a new section, § 8.02, to the regulations as adopted.

Section 8.02(a) specifies those regulations for which exchanges must adopt implementing rules (§§ 8.11, 8.13, 8.15, 8.17, 8.18, and 8.20 of subpart B and §§ 8.26 and 8.28 of subpart C). Each exchange should have specific rules implementing these regulations, since they permit an exchange to choose among several alternative approaches and it is important for a person subject to a disciplinary action to know exactly what his rights and obligations are under that exchange's procedures. For example, some of these regulations require an exchange to take or permit a specific action "promptly." Wherever possible the implementing exchange rule should specify what that period of time is.

In addition, section 8.02(a) requires each exchange to submit all rules required to be adopted pursuant thereto by the effective date of the part 8 regulations. Of course, an exchange applying for contract market designation pursuant to section 6 of the Act subsequent to the effective date of the regulations will have to submit its required part 8 rules at the time of its application.

The Commission wishes to point out that, in contrast to the regulations specified in § 8.02(a), there are other part 8 regulations which do not require the submission of implementing rules but must nonetheless be strictly followed (§§ 8.05, 8.06, 8.07, 8.08, 8.09, and 8.12). For example, while each exchange must have an enforcement staff and a disciplinary committee (§§ 8.05 and 8.08), it need not submit to the Commission rules establishing them.

Certain of the Part 8 regulations provide that a disciplinary procedure is permitted if it is authorized by the rules of an exchange (§§ 8.10, 8.14, 8.16, and 8.20 of subpart B and § 8.27 of subpart C). Section 8.02(b) gives an exchange discretion to adopt rules implementing any or all of these regulations.

Sections 8.02 (a) and (b) require each exchange to submit all rules adopted pursuant thereto to the Commission for its approval. The Commission recognizes that prior to these regulations an exchange may have adopted rules that comply with various sections of Part 8. The prohibition in §§ 8.02 (a) and (b) against putting into effect a rule submitted pursuant thereto prior to Commission approval does not apply to existing exchange rules which are required to be enforced in accordance with § 1.53 or which have been submitted to and approved by the Commission pursuant to section 5a(12) of the Act.

DEFINITIONS

The term "disciplinary procedure" in § 8.03(d) has been amended to refer only to the investigation and adjudication of possible rule violations and the imposition of penalties under subpart B. It does not include the taking of summary action, which is now subject to the procedures set forth in subpart C, or to the adjudication of membership denial actions which, as noted above, is to be governed by a separate set of procedures to be adopted as subpart D.

The term "exchange" in § 8.03(f) replaces the term "contract market," used in the proposed regulations, in order to be consistent with section 8c of the Act and with regulations proposed as part 9.

The term "penalty" in § 8.03(i) has been modified, as discussed below, to refer only to sanctions imposed pursuant to a finding that a violation has been committed or the terms of a settlement agreement.[7] Thus, a warning letter does not constitute a penalty if it is issued in accordance with § 8.07(c) but does constitute a penalty if it is issued after a finding that a violation has been committed.

The term "respondent" in § 8.03(l) has been amended for clarification to include a person who is subject to a summary action under subpart C as well as a person served with a notice of charges under subpart B.

The following new definitions were added to § 8.03 to clarify the adopted regulations: (b) "Charge or charges," (j) "person(s) within the jurisdiction of an exchange," (k) "record of the proceeding," and (n) "violation."

RECORD RETENTION

All reports and records required to be made under these regulations are subject to the general record retention and inspection provisions contained in § 1.31.

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[5] One of the areas which generated considerable discussion is the requirement that an exchange maintain an independent enforcement staff to investigate and prosecute possible rule violations. (See § 8.05.) The regulation, however, is consistent with guideline II, a Commission policy statement issued nearly 3 years ago.

[6] 42 FR 30473 (June 14, 1977).

[7] Under § 8.16(c), a settlement agreement must specify the rule violations the disciplinary committee has reason to believe were committed. However, a respondent may be permitted to accept a penalty without either admitting or denying the rule violations upon which the penalty is based.

ENFORCEMENT STAFF

Seven exchanges commented on the requirements of § 8.05 relating to the composition and functions of the enforcement staff. Section 8.05 requires each exchange to have an enforcement staff which is authorized to investigate and prosecute possible rule violations, and precludes exchange members and persons whose interests would conflict with enforcement duties from serving on the staff. It also prohibits persons with trading privileges from directing or controlling the staff's operations. While not specifically stated in § 8.05, the Commission assumes that the members of the enforcement staff, like all other employees of the exchange, will operate under the chief executive officer of the exchange.

The comments ranged from requests for clarification to strong objection. In general, the strong objections were voiced by those exchanges whose present systems conflict with the regulation either because members now participate in investigating and/or prosecuting possible violations or because their enforcement staffs, operate under the direct supervision of exchange members as an adjunct of an exchange committee. These exchanges argued that their present systems are workable and effective and that if the enforcement staff is restricted to nonmembers it will suffer from a lack of expertise which members provide by virtue of their experience with exchange operations.

The requirements of § 8.05 concerning the composition of the enforcement staff reflect an important policy. In guideline II the Commission advises that "each exchange has the obligation of having a suitable staff engaged in actively and continuously looking for possible violations * * *." Elaborating upon the term "suitable staff," the Commission states that an exchange could not meet its rule enforcement obligations by utilizing member officers or committees as its sole enforcement staff. Guideline II further recommends that a "suitable staff" could consist of exchange employees or persons hired on a contract basis to conduct an exchange rule enforcement program. The Commission continues to believe that an independent enforcement staff is best able to investigate trading activities as they occur, since such persons are not preoccupied with or constrained by their own participation or interest in the market during trading periods. Accordingly, § 8.05(a) provides that the enforcement staff must be comprised of employees of the exchange and/or persons hired on a contract basis.

One exchange commented that members who are actively engaged in trading in the pit and who are on a business conduct committee are much more aware of the nuances of trading and are able to discern quickly whether certain evidence warrants further investigation. Where a member is witness to a questionable incident, it is expected that he will furnish such information to the enforcement staff and, when necessary, will be subsequently interviewed by it. It is the Commission's view that anyone with reason to believe that a violation has been or will be committed should report that information to the enforcement staff. Members serving on a business conduct committee have an even greater responsibility in this regard.

The Commission wishes to make clear that the prohibition against a member serving on an enforcement staff or supervising its activities is not so broad as to pevent the staff from seeking members' expert advice in appropriate circumstances. The Commission expects that members' invaluable expertise will be available to the enforcement staff. This prohibition is not intended to impugn to any degree the propriety of such member assistance. It is designed to prevent possible conflicts of interest by insuring a working distance between an enforcement staff and exchange members.

Certain exchanges criticized the Commission's statement in proposed part 8 that the vigorous and thorough investigation and prosecution of rule violations is best accomplished by persons with no inherent conflicts of interest. Those exchanges argued that there would be a greater conflict of interest if staff persons investigate and prosecute rule violations than if other members assume those duties. They reasoned that an employee on the enforcement staff of an exchange would have to look to the exchange, to the governing board or to a committee of exchange members for his job security and advancement. In contrast, they asserted, a member can act vigorously against another member without concern that it will affect his business or his future.

The Commission emphasizes that the adoption of the requirements of part 8 is not intended to question, in any way, the integrity or honesty of the exchange community. Rather, the Commission has endeavored to devise standards for disciplinary procedures in which potential conflicts of interest will be minimized. Because members may be subject to exchange disciplinary action, the investigation and prosecution of possible rule violations should be performed by nonmembers to eliminate any potential conflicts of interest. The Commission is indeed concerned by exchange comments that members of the enforcement staff may be influenced in carrying out their duties by concern for job security. However, there will not be a problem if, as is required, the enforcement staff is truly independent. In furtherance of that requirement and in recognition of the fact that some members of the enforcement staff may serve concurrently in a market surveillance or other nondisciplinary administrative role, the Commission has amended § 8.05 of the adopted regulations to provide that when carrying out an enforcement responsibility, a member of the enforcement staff may not operate under the direct supervision or control of any person with trading privileges or any exchange body composed of such persons.[8] The Commission will reexamine this issue from time to time and will amend the regulation if appropriate.

Some exchanges asked the Commission to distinguish between the power of a disciplinary committee to direct the activities of the enforcement staff and the function of a disciplinary committee in an oversight role which involves regular review and evaluation of the enforcement staff's performance and includes reports to the board of governors. Neither the statement in the preamble of the proposed regulations nor the present requirements of § 8.05 prohibits general committee oversight of the enforcement staff, provided that such oversight does not involve direct participation in or supervision of day-to-day activities of the staff. In fact, the Commission views general operation and performance evaluations of the enforcement staff by exchange committees as fully consistent with an exchange's obligation under § 8.05(b) to insure the effective and diligent enforcement of all rules within its disciplinary jurisdiction. However, to a large extent committee review of enforcement staff performance can be accomplished by careful study of the staff's completed reports and recommendations under § 8.07. It need not require extensive involvement in the staff's enforcement activities.

Finally, one exchange asked whether the disciplinary committee was precluded from directing the enforcement staff to conduct an investigation. As adopted, § 8.06(a)(2) requires the enforcement staff to commence an investigation upon receipt of information

[8] Although the prohibition against members supervising the enforcement staff was not set forth in the text of the proposed regulations, the Commission stated in the preamble: "This prohibition against member participation on the enforcement staff extends not only to their direct participation but also to any supervisory capacity as well; that is, the enforcement staff may not operate under the direction of a contract market committee such as a Business Conduct Committee which is composed of members." 42 FR 11142 (February 25, 1977).

which, in its judgment, indicates a possible basis for finding that a violation has occurred or will occur. As stated above, exchange members have an affirmative duty to report to the staff information concerning possible rule violations. The provision in § 8.05 that the enforcement staff may not operate under the direction or control of persons with trading privileges is not intended to alter this duty in any way. But it does mean that a procedure in which an investigation must be authorized by a committee of members before the enforcement staff may take action will not be permitted.

INVESTIGATIONS

Section 8.06(a) requires each exchange to establish and maintain a disciplinary procedure which requires the enforcement staff to conduct investigations of possible rule violations within the disciplinary jurisdiction of the exchange. The regulation provides in general that such an investigation must be commenced (1) upon the request of the Commission, its Executive Director or his delegee or (2) upon the discovery or receipt of information by the exchange which indicates a possible rule violation has occurred or will occur. The enforcement staff must commence its investigation promptly and, as stated above, without further authorization from any exchange official or entity.

As adopted, § 8.06(a)(1) provides that an investigation must be commenced not only upon the request of the Commission but, in addition, upon the request of its Executive Director or his delegee. Such delegee could be the General Counsel, the Director of the Division of Enforcement, or the Director of the Division of Trading and Markets. The Commission cautions that the foregoing examples are given for illustrative purposes only; they are not meant to be all-inclusive.

One exchange commented that it believed that a request by the Commission for the commencement of an investigation should be in writing and should include a statement giving the basis for the request. As a practical matter, § 8.06(a)(1) requests normally will be made in writing.

The Commission wishes to make clear that § 8.06(a)(1) refers to requests to commence an investigation. Neither it nor any other part 8 regulation affects in any way the authority given the Commission and its staff under the Act to make routine requests for information on surveillance or other matters. Such requests will continue to be treated as general in nature. Similarly, nothing in the part 8 regulations should be construed to alter the full inspection powers given the Commission and its staff under the Act.

As adopted, § 8.06(a)(2) provides that an investigation must be commenced upon the discovery or receipt of credible information by an exchange. The broad language of the adopted regulation is intended to cover both those situations specified in the proposed regulation and all other appropriate cases.

Accordingly, while no longer explicitly stated in the regulation, an investigation continues to be required upon receipt of a complaint from a customer, exchange member, or any other person. Adequate investigation of such complaints should consist of a meaningful inquiry into every complaint which, if true, would constitute a violation of exchange rules or conduct inconsistent with just and equitable principles of trading, or which otherwise would be detrimental to the exchange. An investigation should be made in all instances unless the exchange has sufficient knowledge concerning the matter complained of to determine it is clearly unworthy of belief.

Similarly, an investigation must commence upon receipt of appropriate information from or request by an exchange official. Failure of an exchange to apprise its enforcement staff of a possible rule violation would be a failure to act pursuant to, and therefore a violation of, § 1.51

The enforcement staff must investigate all credible charges and significant indications of violations, regardless of how they come to the attention of an exchange. This is true whether such matters are brought to the attention of the exchange by members, by anonymous charges, by press reports, or by any other source. Further, the enforcement staff itself should take affirmative action to be alert to any indications of a possible rule violation. For example, information that a person holding membership on two exchanges has been found by one exchange to have violated a rule would likely be grounds under § 8.06(a)(2) for an investigation by the enforcement staff of the other exchange to determine whether similar violations may have been committed by the member at the second exchange, but not grounds for a summary type action.

It is the present practice of one exchange to distinguish between those matters that require an investigation and those that are accorded the lesser treatment of an inquiry. The Commission emphasizes that an investigation is required in all of the situations encompassed by § 8.06(a). The scope and kind of investigation which is conducted, however, is a matter of enforcement staff discretion. The regulation is intended to insure that the staff will, at a minimum, take a long enough look at each case to determine whether it is frivolous or not. An adequate investigation should include, where appropriate, examining records and documents, interviewing members and their employees and agents, and making whatever other inquiries may have a bearing on the matter.

One exchange commented that it is wasteful for both the Commission and an exchange to investigate the same transaction or conduct at the same time. It therefore recommended that an exchange not be required to conduct an investigation where the Commission staff is investigating the same transaction or conduct unless the Commission staff specifically so requests. Similarly, the exchange suggested that the Commission should defer proceeding with an investigation while an exchange investigation is in progress unless either an ongoing violation is involved or the exchange requests the Commission to act.

The language of section 5a(8) of the Act unconditionally requires each contract market to enforce all of its rules approved by the Commission under section 5a(12) of the Act. Underscoring the importance of this obligation, section 6b specifically refers to a contract market's failure to enforce its rules as grounds for the issuance of a Commission cease-and-desist order and the assessment of civil penalties of up to $100,000 for each violation.[9] The fact that the Commission may be investigating a situation which falls within the disciplinary jurisdiction of an exchange does not excuse that exchange from meeting its statutory obligation to enforce its own rules. Of course, in the normal course of the Commission's investigative efforts and those of the several exchanges, situations will arise in which the most productive and effective action will involve a cooperative effort. In meeting its obligations to carry out the purposes of the Act, the Commission will seek to take advantage of all such opportunities. In rare situations, the Commission may want to assume full investigative responsibility for a particular matter. However, a Commission policy which would excuse exchanges from any of their self-regulatory responsibilities would be inconsistent with the Commission's obligations.

The Commission must carry out its own statutory duty to regulate and oversee trading on the exchanges and, thus, will continue to examine those matters deemed appropriate for Commission investigation. Of course, the need to allocate the Commission's limited resources most efficiently means

[9] See secs. 5a(8) and 6b of the Act, 7 U.S.C. 7a(8) and 13a (1976). In addition, § 1.53 of the regulations requires each contract market to enforce those of its rules in effect as of July 18, 1975 unless such rules have been disapproved by the Commission pursuant to sec. 5a(12).

there should be little work overlap if an exchange has promptly undertaken its task and pursues it thoroughly. But even with diligent exchange action, there nevertheless may be occasions when the Commission finds that it is necessary to commence an investigation while an exchange is proceeding with its own investigation.[10] This decision continues to be a matter of Commission discretion.

Paragraph (b) of § 8.06 provides that investigations shall be completed within 4 months, unless there exists significant reason to extend them beyond such period. The following three amendments were made in this section as a result of exchange comments: The period for completing investigations, previously 3 months, was increased to 4 months; the "significant reason" exemption replaces that of "complexity" contained in the proposed regulation; and the periodic reporting requirement for incompleted investigations was deleted.

Several exchanges requested that the period for completing investigations be extended to 6 months. They argued that the proposed investigation period was too short, and that the paperwork required for investigations pending after 3 months would divert the enforcement staff from completing its work. In response to these comments, § 8.06(b) now requires that investigations be completed within 4 months.[11] If as a general practice an exchange cannot complete most investigations within 4 months, its enforcement staff may not be adequate to carry out that exchange's enforcement responsibilities. The 4-month period thus serves as a general guideline for completing exchange investigations.

A number of exchanges commented that extended investigations often result from factors other than "complexity." They cited as examples delays in transmitting needed documents, unavailability of persons with information who may be away on business or vacations, and the volume of work that an enforcement staff may be engaged in at any given time. The Commission agrees that valid reasons other than "complexity" may prevent an enforcement staff from prompty completing an investigation. Accordingly, § 8.06(b) contains a broad exemption from the 4 month requirement for an investigation for which there exists significant reason to extend it beyond the prescribed period.

Several exchanges objected to the proposed periodic reporting requirement for investigations not completed within the time prescribed by the regulation on the grounds that is would create burdensome and unnecessary additional costs. While the Commission has deleted this reporting requirement from the regulation as adopted, it reiterates its position as stated in guideline II that the capstone of any effective rule enforcement program is a procedure which results in the taking of prompt, effective disciplinary action. Accordingly, the Commission reminds the exchanges that in the course of its rule enforcement inspections it will be looking closely at those cases where investigations lasted more than 4 months, and for evidence in their files of significant reason for such duration.

The Commission has determined not to adopt paragraph (c) of the proposed regulation on investigations, which pertained to an exchange's obligation to respond to a complaint. The proposed regulation gave discretion to an exchange to provide that if a complainant wanted a response, his complainant had to be in writing. While this provision has not been adopted by the Commission, pursuant to § 8.01 an exchange has the authority to provide in its disciplinary rules that a complaint must be in writing before it must provide the complaint with a response. However, the adoption of such a rule would not relieve the exchange of its self-regulatory responsibility to investigate all credible charges and significant indications of violations, regardless of how they are brought to its attention.

INVESTIGATION REPORTS

At the conclusion of an investigation, § 8.07 of the adopted regulations requires the enforcement staff to prepare a written investigation report. This report will serve two purposes. First, it will provide the disciplinary committee with the basis upon which to decide whether to issue changes of a violation. Second, it will serve as a record of the investigation and resultant conclusions by the enforcement staff which may be examined by the Commission during its periodic inspections of the exchange's rule enforcement procedures.

Several exchanges were concerned about the "conclusions and recommendations" proposed to be included in an enforcement staff report. One exchange believed it was inappropriate for the enforcement staff to recommend sanctions in its report. This exchange urged that any recommendation be limited to a general statement that the disciplinary committee should hear the case. In response to these comments, § 8.07(a) now requires that the investigation report must contain a summary of any complaint, the relevant facts, the enforcement staff's conclusions as to whether a reasonable basis exists for finding a violation and a recommendation as to whether the disciplinary committee should proceed with the matter.

The Commission wishes to make clear that an enforcement staff conclusion that a reasonable basis for finding a violation does or does not exist is not a determination that a violation has or has not occurred. Rather, it is a threshold finding of whether a sufficient basis exists to merit proceeding with the case. Thus, under § 8.07(a), if the enforcement staff concludes a reasonable basis exists for finding a violation, its report must be submitted promptly to the disciplinary committee. Under § 8.07(b), if the enforcement staff concludes that no reasonable basis exists for finding a violation, the investigation report becomes part of the case file and the file there after may be closed. Although § 8.07(b) does not require the enforcement staff to send its report to the disciplinary committee in these case, pursuant to § 8.01 an exchange may include this requirement in its rules if it so desires.

As adopted, paragraphs (a) and (b) of § 8.07 have been amended to require that the enforcement staff also include in each investigation report the reason why the investigation was conducted. This requirement may be satisfied by a simple statement that the investigation was initiated at the request of the disciplinary committee or because a customer complaint was received. The provision was added in order to provide the Commission with information on what proportion of investigations are commenced pursuant to Commission and exchange requests and customer or member complaints as compared to the number which are initiated directly by the enforcement staff. This information will aid the Commission in its evaluation of an exchange's responsiveness to customer complaints.

The Commission does not intend for the investigation report requirement to be unnecessarily burdensome. For example, many investigation files may

[10] For example, the remedies available to the Commission and an exchange are different and the situation may require a remedy which belongs exclusively to the Commission. Under sec. 6c of the Act, if a person has engaged, is engaging, or is about to engage in any action or practice constituting a violation of any provision of the Act or a Commission regulation or order, the Commission may bring an action to enjoin such act and enforce compliance with the provision in question. The scope or purpose of a Commission investigation may differ from that of an exchange. The Commission's investigation may be only part of its overall rule enforcement inspection or it may be an investigation conducted pursuant to sec. 8 of the Act for the purpose of apprising Congress of developments in a matter in which it is interested.

[11] Section 8.06 was adopted, in part, in response to recommendations by the Comptroller General that the Commission should establish and enforce standards for completing investigations made by commodity exchanges. Comptroller General of the United States, Report to the Congress, Improvement needed in the Regulation of Commodity Futures Trading 39 (June 24, 1975).

appropriately be closed with a one page memorandum and many customer complaint files probably can be closed merely with a copy of the letter of response, so long as these documents contain full information regarding the final disposition of the matter and the reasons therefor.

A new paragraph (c) has been added to § 8.07, which permits an exchange to issue a warning letter without an express finding that a violation has been committed. Proposed part 8 included a warning letter in the definition of a penalty. As such this letter could not, under the proposed regulations, be sent until there in fact had been a finding that a violation had occurred. Several exchanges provided examples where a disciplinary proceeding would be inappropriate but where a warning or cautionary letter might have a remedial effect—such as a situation in which it was strongly suspected that a rule had been violated but probative evidence was at that time lacking. The Commission agrees that warning letters may have a prophylactic effect in this and other situations. Therefore, a warning letter issued under § 8.07(c) will not be considered a penalty because it will not be issued pursuant to a finding that a violation has been committed. A warning letter will be considered a penalty, however, if it is issued pursuant to a finding by the disciplinary committee that a violation has occurred.

DISCIPLINARY COMMITTEE

Under the regulations as proposed and as adopted, each exchange is required to establish one or more disciplinary committees to perform the following functions: (1) Determining what action should be taken after the enforcement staff submits an investigation report of a possible violation (§ 8.07); (2) accepting offers of settlement (§ 8.16); (3) hearing evidence (§ 8.17); (4) determining whether a violation has been committed (§§ 8.14 and 8.18); and (5) assessing and imposing appropriate penalties (§§ 8.14 and 8.18). The disciplinary committee may consist of exchange members and/or employees; however, no enforcement staff member may serve on a disciplinary committee. This provision is a counter-part to § 8.05(a), which prohibits persons on a disciplinary committee from serving on or directing the operations of the enforcement staff. As previously indicated, these provisions are designed to insure fair treatment to a respondent and to eliminate potential conflicts of interest.

Pursuant to the regulations, the various functions of the "disciplinary committee" may be retained by the exchange board of governors or may be delegated, in full or in part, to one or more bodies of the exchange. The present disciplinary procedure followed by some exchanges divides among two or more groups those functions required of the disciplinary committee. Section 8.08 permits an exchange to divide the disciplinary committee's responsibilites on either a functional or subject matter basis. For example, one "disciplinary committee" may have the authority to determine whether there is sufficient evidence of a violation to go forward with a notice of charges, while another "disciplinary committee" may thereafter hear evidence, make a decision, and assess a penalty. An exchange could also establish a "disciplinary committee" to handle floor violations and another to handle violations of financial requirements.

REVIEW OF INVESTIGATION REPORT

Section 8.09 requires the disciplinary committee to review the investigation report prepared by the enforcement staff and to determine whether to adjudicate the possible violation. In the event the committee determines that additional investigation or evidence is needed, it must promptly direct the enforcement staff to conduct its investigation further. After receipt and review of a completed report, the committee could determine to go forward with the case, could disagree with the enforcement staff regarding whether information had been adduced which indicates a reasonable basis exists for finding a violation, or could determine that even though the staff had presented evidence which indicates a reasonable basis exists for finding a violation, the violation is one which, in light of all of the circumstances, should not be adjudicated.

One exchange objected on the grounds of vagueness to the standard in the proposed regulation that the disciplinary committee take action on an investigation report within "a reasonable period of time." The Commission has accordingly amended the regulation to provide that the disciplinary committee must act within a reasonable period of time not to exceed 30 days.

In response to other exchange comments, § 8.09(a) has been amended to make clear that the disciplinary committee has the perogative not to issue a notice of charges even if the enforcement staff has recommended such action and has concluded that a reasonable basis exists for finding that a violation has occurred. As adopted, the regulation provides that if the disciplinary committee determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Section 8.09(a) further provides that if the disciplinary committee determines, for any reason, not to adjudicate a possible violation brought to its attention by an investigation report, that decision must be in writing and contain a statement of the reasons therefor. While the section as adopted does not explictly require the transmission of the determination to the Commission, an exchange would be required to comply with a Commission request for the determination in the event one is made.

PREDETERMINED PENALTIES

Section 8.10 gives an exchange discretion to adopt rules which set specific maximum penalties for particular violations. Unlike the proposed regulation, it does not also authorize the disciplinary committee to set penalties for other violations on an ad hoc basis in advance of a hearing.

Comments on the concept of predetermined penalties were mixed. Some exchanges argued that it would be a mistake to set penalties before the facts have been presented and the gravity of the offense determined. The Commission points out, however, that predetermined penalties are designed to expedite the disciplinary procedure and their use is entirely a matter of exchange discretion. Furthermore, § 8.10 gives the disciplinary committee discretion in each case whether to employ the predetermined penalty. For example, where a respondent continuously violates a rule for which a predetermined penalty has been established, the disciplinary committee has the discretion to impose a greater penalty with a more remedial effect. However, if the predetermined penalty is employed, the disciplinary committee is restricted to imposing it or some appropriate lesser penalty after a hearing on a denied charge for which a respondent is found to have committed the violation charged.

NOTICE OF CHARGES

Once the disciplinary committee has determined that a matter is one which should be adjudicated, the enforcement staff would assume the role of prosecutor, preparing the notice of charges and proceeding with the hearing when one is requested by the respondent.

Section 8.11 sets forth the requirements concerning the minimum information which must be included in a notice charging a person with a violation. One exchange objected to the provision requiring it to specify the rules alleged to have been violated (or about to be violated). The Commission does not feel this comment has merit, as it believes it is a fundamental right of a respondent to know which rules he is charged with violating. This exchange stated that a respondent does not always violate a specific rule but is

sometimes charged with engaging in conduct that is detrimental to the best interests of the exchange or is inconsistent with just and equitable principles of trade. The Commission agrees that an exchange may enforce general standards for professional conduct and practices. It is suggested that those exchanges which wish to enforce general professional standards adopt rules setting forth such standards.

RIGHT TO REPRESENTATION

Section 8.12 differs from the proposed regulation in two significant respects. First, the right to representation now commences with the service of a notice of charges. Second, a respondent no longer is limited to representation by legal counsel. The regulation as adopted provides for representation by an attorney or any other representative of the respondent's choosing.

Several exchanges commented that the provision in the proposed regulation which would have allowed representation in every aspect of the disciplinary procedure was too broad. They argued that participation by counsel could impede an investigation and could result in more protracted and costly proceedings. The Commission believes these comments have some merit. More importantly, the Commission has concluded that fairness does not require that a person whose conduct is under investigation have the right to be represented during that investigation. Rather, the Commission believes that the fundamental rights of a respondent will be adequately protected by affording him the right to be represented upon being charged with a violation and thereafter throughout the remainder of the proceeding. Section 8.12 as adopted reflects this belief. The Commission points out that while the adopted regulations do not provide for a right to be represented during an investigation, an exchange is not precluded from providing such a right.

One exchange objected to the right to representation in the adjudicatory stage of the proceeding. However, as the Commission has stated, it is necessary to insure a respondent's fundamental rights.

The Commission is aware that representation by an attorney may not be suitable in all situations. For example, a respondent associated with a futures commission merchant might find it more appropriate to be represented by the chief executive officer of his organization. Accordingly, § 8.12 now allows a respondent to be represented by legal counsel or any other person of his choosing.

The representation afforded under § 8.12 should not be construed to mean merely providing advice. Such representation could include, if desired by the respondent, preparing documents, assisting with discovery, negotiating settlements, presenting evidence, including examining and cross-examining witnesses, oral argument and any other assistance requested by the respondent.

ANSWER TO CHARGES

Section 8.13 requires that each person charged with a violation be given the opportunity to answer the charges. Under the proposed regulations failure to deny a charge or to file an answer was deemed as admission of a charge. Three exchanges objected to the rigidity of this provision. One exchange asserted that a respondent should have the right to refuse to answer and the exchange should have the burden of proving that a violation has occurred before a penalty is levied. Two other exchanges also argued that the requirement to answer a notice of charges is frivolous inasmuch as they require a hearing to be conducted following every issuance of charges, regardless of whether a respondent has requested a hearing. To provide each exchange with flexibility in this area, the Commission has amended the regulation to provide that an answer to charges is permitted but not required. In addition, § 8.13 gives each exchange discretion to adopt default provisions for failure to file an answer on a timely basis or failure to deny expressly all charges contained in a notice of charges.

ADMISSION OR FAILURE TO DENY CHARGES

Paragraph (a) of § 8.14 permits an exchange to adopt rules which allow the disciplinary committee to impose penalties when a respondent admits the charges or fails to deny them. Subparagraph (a)(1) restricts the disciplinary committee to imposing the predetermined penalty, where applicable, or an appropriate lesser penalty.

Paragraph (a) leaves to the discretion of each exchange whether to provide for a hearing where a respondent admits the charges or fails to deny them. For example, one exchange contemplates using a system in which a hearing on the charges is mandatory. Under this system, when a respondent fails to answer a notice of charges or defaults at a hearing, the disciplinary committee is nevertheless required to hear evidence submitted in support of the charges and to determine an appropriate sanction based upon the evidence.

Paragraph (b) of § 8.14 requires the disciplinary committee to promptly advise the respondent in writing of any penalty imposed pursuant to paragraph (a) for charges admitted or not specifically denied and that, where appropriate, he is entitled to request a hearing on the penalty before it may be imposed.

DENIAL OF CHARGES AND RIGHT TO HEARING

Section 8.15 provides that a respondent must be given an opportunity for a hearing on charges denied or on a penalty imposed pursuant to § 8.14(a)(2). Under the proposed regulations, the scope of a hearing was limited to those charges denied or penalties for which a hearing was requested. This limitation is no longer mandatory under the adopted regulations. Thus, for example, an exchange which prefers to conduct a hearing on all of the charges in the notice of charges, including those admitted by a respondent, is free to do so.

One exchange commented that a respondent who failed to request a hearing on charges in the notice should not be entitled to a hearing on a penalty set by the disciplinary committee under § 8.14(a)(2). The Commission disagrees. If a respondent charged with a relatively minor violation failed to answer the charge, under § 8.14(a)(2) the disciplinary committee could set a penalty which to the respondent seemed to be disproportionate to the offense. Accordingly, a respondent should be given an opportunity for a hearing on a penalty set under § 8.14(a)(2).

SETTLEMENT OFFERS

Section 8.16 provides in general that an exchange may adopt rules which permit a respondent to submit a written offer of settlement to the disciplinary committee at any time after the investigation report is completed. If the offer of settlement is accepted, the disciplinary committee is required to issue a written decision specifying the rule violations it has reason to believe were committed and any penalty to be imposed. If the offer is withdrawn by the respondent or rejected by the committee, the respondent cannot be deemed to have made any admissions therein. As is discussed below, § 8.16 varies significantly from the proposed regulation.

Many exchanges were critical of the proposed provisions for settlement, contending that the procedure was too rigid and cumbersome. They objected to the proposed requirements that: (1) An offer of settlement could not be submitted before a notice of charges was issued; (2) the enforcement staff had to be involved in the negotiation of settlement agreements; (3) findings and conclusions of rule violations had to be made; and (4) sanctions had to be adequate to deter future violations.

The Commission agrees that the proposed involvement of the enforcement staff in settlement negotiations is unnecessary and has deleted such

involvement from the regulation as adopted. The Commission similarly agrees with the objection to the proposed requirement that an offer of settlement could not be submitted before a notice of charges was issued. Accordingly, settlement may now commence after the investigation report is completed.

The Commission has also deleted from the regulation the specific requirement to impose a penalty sufficient enough to deter future violations, which was objected to on the ground of vagueness. However, this deletion should not be interpreted to mean that an inadequate penalty would be appropriate. In imposing a penalty pursuant to § 8.16 the disciplinary committee must take into consideration the same factors it would employ in setting a penalty after a hearing. These factors are discussed in the text under § 8.18.

The Commission stated in the preamble to the proposed regulations that "[a]ny settlement agreed to by the disciplinary committee would constitute an exchange disciplinary action under section 8c(1)(A) of the Act as if the matter were fully adjudicated." [12] Because settlements are disciplinary actions which are subject to Commission review under section 8c(2) of the Act, it is necessary to have a record of the reasons for such actions taken by an exchange. In accordance with new § 8.16(b), an exchange may adopt rules which permit a respondent to accept a penalty without either admitting or denying the rule violations upon which the penalty is based. Pursuant to new § 8.16(c), the disciplinary committee must specify in its decision the rule violations it has reason to believe were committed. These new provisions may expedite the disciplinary procedure by encouraging settlement without sacrificing information which is critical to the Commission's oversight responsibilities.

Section 8.16(d) broadens the scope of protection given to a respondent in the event an offer of settlement proves unsatisfactory. As adopted, it provides that if the offer is withdrawn by the respondent or rejected by the disciplinary committee, the respondent cannot be deemed to have made any admissions by reason of the offer and otherwise cannot be prejudiced thereby.

The Commission emphasizes that the submission of an offer of settlement is not reason to suspend compliance with the requirement of § 8.17(a)(3) that a hearing be promptly convened.

HEARING

Substantial comment was received on the requirements for a hearing. The use of the terms "fair" and "due process" in the proposed regulation evoked objections from several exchanges. They argued that these terms would invite litigation and were unnecessary in view of the Commission's authority to review exchange actions under section 8 of the Act. One exchange also commented that the term "due process" was not applicable to private action. The Commission believes that the right to a fair hearing is so fundamental that this principle must be embodied in the regulations, despite any exchange fears of additional litigation. Moreover, it is not sufficient that an exchange action may be subject to Commission review; a respondent is entitled to a fair hearing in the first instance. However, the regulation as adopted replaces the term "due process" with that of "fair hearing."

Other commenters were unsure of the meaning of "disinterested" members of a disciplinary committee. The Commission has amended § 8.17(a)(1) by providing a more specific conflict of interest standard. The regulation now prohibits a member from serving on the hearing panel if he or any firm with which he is affiliated has a financial, personal, or other direct interest in the matter under consideration.

Seven exchanges took issue with the proposed discovery provision under which a respondent could examine all relevant documents in the possession or under the control of the exchange which were to be relied upon by the enforcement staff in presenting its case, or which were relevant to the notice of charges or could lead to relevant evidence. The greatest objection was voiced against the right to examine documents which could lead to relevant evidence. These exchanges were concerned that this provision would be used to delay the proceedings or to seek confidential documents in exchange files which were unrelated to the disciplinary action. They stated that the provision was not necessary to protect the rights of a person charged with a violation and pointed out that the rules of practice governing proceedings before the Commission do not contain such a provision. The Commission has deleted the requirement that a respondent be given access to documents which may lead to relevant evidence, primarily because the rights of a respondent appear to be adequately protected without access to such information.

Two exchanges would have narrowed access even further, by limiting discovery to those documents to be relied upon by the enforcement staff in presenting its case. The Commission disagrees with this suggestion. Such a narrow provision might be used to suppress exculpatory evidence which is relevant to charges contained in the notice of charges but which would not be relied upon by the enforcement staff in presenting its case.

The futures commission merchant which commented presented a rather different view from that expressed by the exchanges. It suggested that discovery be expanded to permit a respondent to serve up to 20 interrogatories on the exchange, to be answered or objected to within 30 days. The commenter also proposed that objections should be accompanied by reasons, and that if the enforcement staff and respondent were unable to resolve their differences, the matter should be submitted to the disciplinary committee. Additional provisions would permit a respondent to file exceptions if the disciplinary committee sustained the objections.

The Commssion does not believe that the use of interrogatories is necessary for a fair proceeding. A respondent is adequately protected if he is entitled to discover from the exchange all books, documents, or other tangible evidence which are relevant to his case; as provided for in § 8.17(a)(2), and is assured of the presence of all witnesses and the right to examine and cross-examine such persons at a hearing, as provided for in §§ 8.17(a)(7)-(9). The Commission believes, however, that these comments, from a person who like other futures commission merchants may be the subject of a disciplinary proceeding, underscore the need for the procedures provided in these regulations which have been developed to assure the rights of a respondent by establishing minimum standards of procedural and substantive fairness.

The Commission has also added § 8.17(a)(7) to the regulations. This section requires persons within the exchange's jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. An exchange must also make a reasonable effort to secure the presence of all other persons called as witnesses whose testimony would be relevant. This provision insures that a respondent will be able to call witnesses whose testimony is material to his defense, and conversely enables the enforcement staff, which lacks subpena power, to call hostile witnesses who might otherwise be unwilling to testify.

The Commission had specifically requested comments concerning the type of record required to be made of the hearing. One exchange commented that the Commission should not specify the kind of record but should leave that decision to each exchange. Two exchanges stated that in most instances a summary record, perhaps in the form of minutes of the proceeding, would be adequate. However, where a

[12] 42 FR 11144-11145 (Feb. 25, 1977).

proceeding was unusually complex or an appeal seemed likely, a stenographic record or tape recording could be required unless waived by the respondent, in which event a summary record would be made. Two exchanges recommended that a stenographic record be kept but only transcribed if the action were appealed. They further suggested that if a regulation requiring a stenographic record were adopted, it should provide that the party requesting the transcription should bear its cost.

Because of the need for an accurate and complete record, the adopted regulations provide that where a respondent has requested a hearing, the record of the proceeding must be a substantially verbatim record that is capable of being accurately transcribed. This standard clearly does not permit a summary record. It does, however, leave to each exchange's discretion the specific type of record it wishes to develop. Thus, an exchange may use a hand- or machine-made stenographic record or an electronic tape recording supervised by an individual having a proficiency in the area. In order to minimize costs, § 8.17(a)(10) further provides that the record need not be transcribed unless the transcript is requested by the respondent or Commission staff, or the decision is appealed to the board of appeals or is reviewed by the Commission.

In addition, the Commission has provided in § 8.17(a)(10)(i) that the exchange rules may provide that the cost of transcribing the record shall be borne by a respondent who appeals a decision to the board of appeals, or whose application for Commission review of the disciplinary action has been granted under section 8c of the Act. An exchange, in its discretion, may adopt a policy of compensating respondents for transcript expenses in the event that the appellate body decides in the respondent's favor. Where the board of appeals or the Commission undertakes review on its own or where the Commission staff has requested a copy of the recording, the exchange must pay the cost of transcription.

To complement § 8.17(a)(9), the Commission has also added § 8.17(b). This section provides that an exchange may adopt a rule providing for the summary imposition of sanctions upon any person within its jurisdiction whose actions are impeding the progress of the hearing. Such a rule could authorize sanctions upon a witness who fails to appear at a hearing without good cause or upon a person at a hearing who engages in disruptive conduct.

DECISION

Section 8.18 provides that at the conclusion of a hearing the disciplinary committee must render a written decision based upon the weight of the evidence contained in the record of the proceeding. The decision must include the following: (1) The notice of charges or a summary; (2) the respondent's answer, if any, or a summary; (3) a brief summary of the evidence produced at the hearing or, if appropriate, incorporation by reference to the investigation report; (4) a statement of findings and conclusions with respect to each charge, including the specific rules which the respondent is found to have violated; and (5) a declaration of any penalty imposed and the effective date of such penalty.

The Commission received one comment that the section was too detailed and should be revised to provide only that the committee render a decision in writing based upon the record. Another commenter urged that the requirement for a summary of the evidence be deleted.

The decision serves two functions. First, it serves to apprise the respondent of the conclusion of the disciplinary committee on each of the charges. Second, the decision is a concise record of the proceeding which can be reviewed by the Commission as part of its oversight of exchange enforcement programs and can assist in determining whether formal review of the action under section 8c of the Act may be appropriate.

It is essential for these purposes that the decision be based upon a fair and constant standard and include not only the issues and any penalties imposed, but also the reasons for the decision. A respondent is entitled to know the basis of any finding or conclusion that he violated exchange rules so that he may determine whether to request an appeal, if appeal is permitted by the exchange rules, or to petition the Commission for review. Accordingly, the adopted regulations provide in § 8.18 that the decision must be based upon the weight of the evidence contained in the record of the proceeding and contain a brief summary of the evidence and findings and conclusions concerning each charge.

One exchange asserted that there was little chance that the Commission will require a summary of the evidence in reviewing a disciplinary proceeding and therefore the convenience of using the information on an occasional basis must be weighed against the burden on the exchange. The Commission staff anticipates reviewing the summary of the evidence in every instance in which the disciplinary committee determines pursuant to a hearing that a violation has occurred. The Commission's experience in reviewing the notices of disciplinary action required to be provided to the Commission under section 8c(1)(B) of the Act has shown that the notices are generally inadequate for determining whether a review proceeding should be initiated by the Commission in accordance with section 8(c)(2) of the Act. This was one of the primary reasons for requiring the disciplinary committee to summarize the evidence and to include the summary in the decision.[13]

The Commission does understand the concern that requiring a summary of the evidence in all cases could impose an unnecessary burden on an exchange. Accordingly, § 8.18(c) allows an exchange in appropriate circumstances to incorporate by reference relevant portions of the investigation report instead of summarizing the same evidence presented at the hearing.

The proposed regulations provided a separate section which set forth the standards to be followed by the disciplinary committee in setting penalties. The Commission has determined not to adopt such a regulation. However, that is not to say that these same standards should not be employed.

One of these standards requires the disciplinary committee to consider whether the penalty will be sufficiently remedial to deter future violations in view of the size of the respondent's business and other factors. One exchange questioned whether this would require a disciplinary committee to be more lenient in the imposition of penalties if a respondent's business is small. The Commission wishes to clarify that this provision is not meant to imply that small businesses should necessarily be treated more leniently. Rather, the provision is intended to address the situation in which a standard penalty is inadequate because a respondent finds that it is more profitable to engage in the violation and pay a fine than to refrain from the violative act or practices, particularly where there has been a continued pattern of violative conduct.

Another of these standards requires the disciplinary committee to consider the impact of the penalty on the respondent's business. One exchange asked whether this requirement would preclude an exchange from expelling a member. This is not the purpose or intention of the standards. If an expul-

[13] Note that under the proposed regulations for Commission review of exchange disciplinary or other adverse actions, part 9, the Commission specifically provided that a copy of the decision issued under Part 8 may serve as the notice of disciplinary action under § 9.11(a). Further, paragraph (c) of that section states that the Division of Trading and Markets may request additional information regarding the disciplinary action taken. 42 FR 30476 (June 14, 1977).

sion is an appropriate penalty under the circumstances, clearly the exchange should take that action.

The Commission wishes to point out that the adopted provisions regarding assessment of penalties have been structured to give an exchange flexibility. It may establish pre-set penalties in its rules for certain violations (§ 8.10), may summarily impose a penalty for charges admitted or not specifically denied subsequent to the notice of charges (§ 8.14(a)) or may establish a penalty after a hearing on the case (§ 8.18). However, no penalties may be imposed until there is a finding based upon an admission or failure to deny charges, a settleent agreement, or the record of the proceeding, that a respondent has committed a violation. Thus, for example, the fact that a person having membership on two exchanges has been sanctioned by one exchange for violating its rules provides no basis in and of itself for the imposition of a penalty on such person by the other exchange.

APPEAL

Section 8.19 provides that an exchange may adopt rules which permit a respondent to appeal promptly an adverse decision of a disciplinary committee in all or certain classes of cases. If the exchange rules permit appeal, they must provide for the establishment of a board of appeals and contain the minimum standards governing appeals set forth in § 8.19. In addition, the exchange rules may authorize the board of appeals to initiate review of a disciplinary committee decision and may provide that an appeal or review proceeding be conducted before all or a panel of such board.

The adopted regulation differs significantly from the proposed regulation. Most importantly, the right to appeal a disciplinary committee decision is now entirely discretionary with each exchange. Some exchanges commented that the proposed right to appeal all adverse decisions would be unduly burdensome and time-consuming. The Commission agrees, and in adopting § 8.19 has left to the discretion of each exchange the determination of whether appeals shall be permitted and, if they are, which cases shall be appealable.

Section 8.19(b) now provides that an exchange may authorize any body or committee to perform the appellate review function. The proposed regulation required the board of governors to hear all appeals. The regulation was modified because the board of governors of an exchange may lack the time, in view of its other duties, to act as the appellate body in all cases where exchange review of a disciplinary committee decision is permitted.

Each exchange must adopt a rule specifying the standard of review to be applied by the board of appeals in making its decision. What that standard will be has been left to the discretion of each exchange. However, the Commission cautions that the standard of review must be set forth clearly in the rule and that it must not be capable of arbitrary or inconsistent application.

One exchange asked if under the regulations the disciplinary committee's function could be limited to making findings and conclusions as to whether a violation had been committed, with the board of appeals setting and imposing penalties. If the rules of an exchange provide for appeal, such an arrangement would be permitted under § 8.08, which states that each exchange shall establish one or more disciplinary committees to determine whether violations have been committed and to set and impose penalties. In the above example, the board of appeals would be serving as the disciplinary committee when it sets and imposes penalties.

FINAL DECISION

Section 8.20 is new. It requires each exchange to establish rules setting forth when a decision rendered pursuant to Subpart B becomes the final decision of the exchange and is not subject to further review under the exchange's own disciplinary procedures. Since § 8.19 provides exchanges wide discretion in permitting appeals of adverse decisions, the determination of when a decision becomes final can only be made by an exchange after it determines whether, and to what extent, to permit appeals. Accordingly, it is appropriate that each exchange, and not the Commission, establish rules regarding the finality of decisions rendered pursuant to its disciplinary procedures.

In commenting on the proposed regulations, one exchange noted that they did not recognize that the board of governors may be acting as the disciplinary committee in the first instance. This is the type of situation to which § 8.20 addresses itself. It is quite likely that if the rules of an exchange permit appeal, they will provide that under such circumstances the decision of the disciplinary committee is final and unappealable within the exchange's disciplinary procedure.

Any person who is suspended, expelled, disciplined or denied access by exchange action is permitted under section 8c of the Act to petition for Commission review of such action. The purpose of § 8.20 is to ensure that a respondent availing himself of section 8c has exhausted all of his remedies under exchange disciplinary procedures and that the Commission is reviewing final decisions.

SUBPART C—SUMMARY PROCEDURE

MEMBER RESPONSIBILITY ACTIONS

Section 8.25 of the adopted regulations authorizes an exchange to take immediate, summary action upon a reasonable belief that such action is necessary to protect the best interests of the marketplace. Unlike the proposed regulation, it does not specifically set forth when such action would be appropriate. Instead, the necessity of such action has been left to the discretion of each exchange.

Two exchanges urged the Commission to adopt, for the purposes of these regulations, the definition of "emergency" which appears in § 1.41(a)(4). They reasoned this would eliminate any potential confusion regarding what could be considered appropriate circumstances for an exchange to take summary action. Such an amendment to the regulation as adopted is unnecessary, since the broad language of § 8.25 includes those provisions of §1.41 which would be applicable in defining the circumstances in which summary action by an exchange against persons within its jurisdiction would be appropriate.[14]

One exchange expressed concern that the regulation as proposed would not permit an exchange to take action to enforce its minimum capital rules. Clearly, the regulation as adopted authorizes such action.

PROCEDURE FOR MEMBER RESPONSIBILITY ACTIONS

The Commission agrees with several exchanges' comments that it would be inappropriate to apply the requirements of subpart B to hearings held subsequent to summary actions by an exchange. Accordingly, § 8.26 of subpart C details the special notice requirements applicable when an exchange takes a summary action, and specifically sets forth those disciplinary proceeding requirements which are applicable to hearings required subsequent thereto. Furthermore, in consideration of the special nature of member responsibility actions, the particular requirements of the form and content of the decision resulting from such hearings are contained in § 8.26(c).

Two exchanges objected to the requirement contained in § 8.17(a)(5), and made applicable to membership responsibility actions by § 8.26(c), that the enforcement staff present the charges at the hearing held subsequent to the summary action taken by an exchange. These exchanges argued that since the formal disciplinary proceeding requirements were inappropri-

[14] See 17 CFR § 1.41(a)(4)(ii)(f) and (g).

ate for such hearings and the enforcement staff would not have been involved at any stage of the committee deliberations which culminated in the summary action being taken, the committee which authorized the summary action should be the body responsible for presenting the charges at the hearing. The Commission has already noted that the requirements governing such hearings are substantially reduced from those imposed on subpart B disciplinary proceedings. These reduced requirements do not, however, lessen the importance of involvement by the enforcement staff. The Commission's position as to the purpose of requiring a truly independent enforcement staff has been explained previously above in the discussion of § 8.05 as an attempt to avoid potential conflicts of interest. It is the opinion of the Commission that the participation of the enforcement staff in a hearing held pursuant to § 8.26(c) is necessary at this stage to insure a thorough review of any evidentiary material already developed by the committee and an objective, vigorous presentation of the full facts and circumstances of the case. Nothing in this requirement is intended to prohibit participation by committee members in the development of the case in an advisory capacity or as witnesses at the hearing.

One exchange strongly opposed the proposed requirement, adopted in § 8.26, for a hearing after summary action is taken. However, the Commission believes that fundamental principles of fairness require that a person who is the subject of a summary action be afforded an opportunity to be heard on the matter. Like that of § 8.18, the decision rendered pursuant to such a hearing is to be based upon the weight of the evidence contained in the record of the proceeding. And, in accordance with § 8.19, the rules of an exchange may permit an appeal from the decision.

VIOLATIONS OF RULES REGARDING DECORUM, SUBMISSION OF RECORDS, OR OTHER SIMILAR ACTIVITIES

Section 8.27 of the adopted regulations provides that an exchange may adopt rules governing the summary imposition of minor penalties for violations of rules regarding decorum, attire, submission of records, or other similar activities. Unlike the proposed regulation, it does not require that such rules provide for a right to representation, hearing, decision, and appeal. Instead, § 8.02(b) now gives to each exchange the discretion to adopt such rules as it deems appropriate to implement § 8.27.

The six exchanges commenting on this section of the proposed regulations agreed that committees such as floor or pit committees should be able to take summary action against members on the floor who are violating an exchange's rules of decorum. Such action is within the scope of § 8.27.

Two of these exchanges objected to the proposed regulation on the grounds that it would have the effect of reducing enforcement of exchange rules by curtailing the authority of the floor or pit committees to deal in summary fashion with objectionable conduct by members unrelated to decorum, such as trading practices which disrupt or are inconsistent with orderly trading. The regulations are not intended to preclude floor or pit committees from taking necessary action in appropriate circumstances. However, to the extent disruptive activities or similar trade practice abuses might be part of more serious or systematic efforts which affect the integrity of the marketplace, the Commission believes the matter requires the more thorough proceedings prescribed under subpart B. Floor or pit committees may take summary action against persons for disruptive or disorderly trading practices only to the extent such action would be appropriate under § 8.25 or § 8.27.

The second area of major objection by exchanges to the proposed regulation concerned the right of appeal from a summary action imposed for a violation of a rule of decorum. Several exchanges stated that an unqualified right of appeal would result in an inordinate number of appeals which were frivolous in nature or related only to minor infractions, such as abusive language. One exchange also expressed the view that no appeals should be permitted below a certain dollar amount in fines. The Commission believes these comments have merit. As stated above, the adopted regulation leaves to the discretion of each exchange whether to permit appeals from an action taken pursuant to § 8.27. Such discretion will be exercised when the exchange adopts implementing rules pursuant to § 8.02(b).

FINAL DECISION

Since §§ 8.26 and 8.27 give discretion to exchanges to determine whether to provide for appeal, a new § 8.28 has been adopted. This regulation requires each exchange to establish rules setting forth when a decision rendered pursuant to subpart C becomes the final decision of the exchange and is not subject to further review under the exchange's own disciplinary procedures.

The purpose of § 8.28 is analagous to that of § 8.20, previously discussed above.

SUBPART D—DENIAL OF MEMBERSHIP [RESERVED]

In proposing part 8, the Commission specifically sought comment on the type of procedure which would be appropriate for membership denial actions, which the Commission considers denials of access subject to Commission review under section 8c of the Act.[15] The regulations as proposed would have required an exchange to follow the disciplinary procedure in determining that an application for membership should not be granted. The Commission, however, recognizes that procedures which are appropriate for determining whether a person has committed a disciplinary-type violation may not be appropriate for determining whether a person should be accepted as a member of an exchange. Accordingly, the Commission asked commenters to suggest how the proposed regulations might be modified or what other regulations might be adopted to achieve appropriate safeguards for persons who are denied exchange membership without requiring a proceeding pursuant to subpart B.

The Commission received comments on this issue from nine exchanges. The commenters unanimously recommended that procedures for membership denial actions not be identical to disciplinary procedures. One exchange voiced strong objection to the Commission's interpreting denials of membership as denials of access, asserting that the latter phrase was intended to affirm the legal right of an exchange to bar nonmembers from trading privileges on its facilities and from physical entry to its premises for security and other reasons. Nevertheless, this exchange indicated that its present practice is to permit an applicant to appear personally at an informal hearing before its board of governors whenever there are significant questions concerning his application. The exchange indicated further that such applicants have occasionally been represented by counsel. One exchange stated that no specific rules of procedure were necessary. Other exchanges proposed various procedures if an application is initially disapproved by the committee on membership, including a hearing before the board of governors and written notice to the applicant stating the reasons for denial in the event the board sustains the membership committee decision. One exchange also recommended that the notice of the denial of membership, required to be given to the Commission under section 8c of the Act, be declared confidential to protect the applicant and the exchange. This exchange expressed concern that it may be unfair to the applicant not to grant

[15] See 42 FR 30472 n. 1 (June 14, 1977).

confidential treatment to the notice containing the reasons for disapproval, since these reasons could reflect negatively on the applicant's character and reputation. The Commission was also urged to permit an exchange to require that an applicant relinquish his right to sue the exchange, its members and employees for any statements concerning the applicant's qualification for membership made in connection with a membership denial action. It was argued that neither an exchange nor its members should be liable when they attempt in an honest manner to apply standards for membership and are obligated by law to disclose the reasons for disapproval of membership.

The Commission agrees with the views expressed by its Office of General Counsel that an exchange has the burden of insuring that there are sufficient grounds upon which to deny an application for membership and that an applicant must be given an opportunity to rebut the reasons which were the basis of the denial.[16]

The Commission has considered the foregoing comments and has determined that membership denial actions should not be subject to the same procedures which are required for adjudicating rule violations. As indicated above, certain modifications of the proposed regulations have been made to reflect this determination.

The Commission has also determined that it is appropriate to adopt regulations which will set standards for the procedures to be used by an exchange in membership denial actions. Subpart D of part 8 has been reserved for that purpose.

This notice of rulemaking is issued under the authority of sections 5a, 8a(5), and 8c of the Act, 7 U.S.C. 7a, 12a(5), and 12c (1976).

In consideration of the foregoing, the Commission hereby amends 17 CFR chapter I by adding a new part 8 as follows:

Subpart A—General Provisions

Sec.

Subpart B—Disciplinary Procedures

Subpart C—Summary Procedure

Subpart D—[Reserved]

AUTHORITY: Secs. 5a, 8a(5) and 8c of the Act, 7 U.S.C. 7a, 12a(5) and 12c (1976).

Subpart A—General Provisions

§ 8.01 Scope of rules.

This part sets forth the standards to be followed by an exchange in establishing procedures for investigating and adjudicating possible rule violations within the disciplinary jurisdiction of the exchange, for taking summary action in member responsibility cases and in cases involving violations of rules regarding decorum, submission of records or other similar activities, and for adjudicating membership denial determinations. Nothing in this part shall be construed to prohibit an exchange from adopting additional rules and practices not inconsistent with those set forth herein.

§ 8.02 Implementing exchange rules.

(a) Each exchange shall submit to the Commission for its approval rules implementing the following regulations: §§ 8.11, 8.13, 8.15, 8.17, 8.18 and 8.20 of subpart B and §§ 8.26 and 8.28 of subpart C. Any such rule not previously submitted to the Commission shall not be put into effect prior to Commission approval.

(b) An exchange may adopt rules implementing any or all of the following regulations: §§ 8.10, 8.16 and 8.19 of subpart B and § 8.27 of subpart C. Each rule so adopted and not previously submitted to the Commission shall be submitted to the Commission for its approval and shall not be put into effect prior to Commission approval.

§ 8.03 Definitions.

For purposes of this part:

(a) "Board of appeals" means that body provided for in § 8.19.

(b) "Charge" or "charges" means any charge or charges contained in the notice of charges.

(c) "Disciplinary committee" means that body or bodies provided for in § 8.08.

(d) "Disciplinary procedure" means the rules of an exchange governing the investigation and adjudication of possible rule violations and the imposition of appropriate penalties under subpart B of this part.

(e) "Enforcement staff" means that body provided for in § 8.05.

(f)) "Exchange" means any board of trade which has been designated as a contract market for one or more commodities pursuant to section 5 of the Act.

(g) "Investigation report" means the report required by § 8.07.

(h) "Notice of charges" means the notice required by § 8.11.

(i) "Penalty" means any restriction, limitation, censure, fine, expulsion, suspension, revocation, reprimand, cease and desist order, sanction or any other disciplinary action for any amount or of any definite or indefinite period imposed upon any person within the disciplinary jurisdiction of an exchange upon a finding by the disciplinary committee that a violation has been committed or pursuant to the terms of a settlement agreement.

(j) "Person(s) within the jurisdiction of an exchange" means any exchange employee, staff member or official, any member or person with membership privileges or any person employed by or affiliated with a member or person with membership privileges, including any agent or associated person, and any other person under the supervision or control of the exchange or of any member.

(k) "Record of the proceeding" means all testimony, exhibits, papers and records produced at or filed in a disciplinary or summary proceeding or served on a respondent or an exchange.

(l) "Respondent" means any person named in a notice of charges who has been served with such notice or who is the subject of a summary action.

(m) "Rule(s) of an exchange" means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy or instrument corresponding thereto.

(n) "Violation" means any violation within the disciplinary jurisdiction of the exchange.

Subpart B—Disciplinary Procedure

§ 8.05 Enforcement staff.

(a) Each exchange shall establish an adequate enforcement staff which shall be authorized by the exchange to initiate and conduct investigations, to prepare reports incident to such investigations and to prosecute possible rule violations within the disciplinary jurisdiction of the exchange. The enforcement staff shall consist of employees of the exchange and/or persons hired on a contract basis. It may not include either members of the exchange or persons whose interests conflict with enforcement duties. When carrying out any responsibility under

[16] CFTC staff interpretative letter 76-23, CCH Comm. Fut. L. Rep. ¶ 20,229.

this part 8 or any rule adopted pursuant thereto, a member of the enforcement staff may not operate under the direction or control of any person or persons with trading privileges.

(b) Each exchange is responsible for assuring the effective and diligent enforcement of all rules within its disciplinary jurisdiction, regardless of whether its enforcement staff consists of employees or persons hired on a contract basis.

§ 8.06 Investigations.

(a) Each exchange shall establish and maintain a disciplinary procedure which requires the enforcement staff of the exchange to conduct investigations of possible rule violations within the disciplinary jurisdiction of the exchange. Such an investigation shall be commenced:

(1) Upon the receipt of a request from the Commission, its Executive Director or his delegee, or

(2) Upon the discovery or receipt of information by the exchange which, in the judgment of the enforcement staff, indicates a possible basis for finding that a violation has occurred or will occur.

(b) Each enforcement staff investigation shall be completed within four months, unless there exists significant reason to extend it beyond such period. If for any reason the enforcement staff closes an investigation before determining whether a reasonable basis exists for finding that a violation has occurred, the staff shall fully set forth the reasons for so closing the investigation in its report.

§ 8.07 Investigation reports.

(a) The enforcement staff shall submit a written investigation report to the disciplinary committee of the exchange in every instance in which the enforcement staff has determined from surveillance or from an investigation that a reasonable basis exists for finding a violation. The investigation report shall include the reason the investigation was initiated, a summary of the complaint, if any, the relevant facts, the enforcement staff's conclusions and a recommendation as to whether the disciplinary committee should proceed with the matter.

(b) If after conducting an investigation the enforcement staff has determined that no reasonable basis exists for finding a violation, it shall prepare a written report including the reason the investigation was initiated, a summary of the complaint, if any, the relevant facts, the enforcement staff's conclusions and, if applicable, any recommendation that the disciplinary committee issue a warning letter in accordance with paragraph (c) of this section. The report shall become part of the investigation file which thereafter may be closed.

(c) In addition to the action required to be taken under either paragraph (a) or (b) of this section, the rules of an exchange may authorize the enforcement staff to issue a warning letter to a person under investigation or to recommend that the disciplinary committee issue such a letter. A warning letter issued in accordance with this section is not a penalty or an indication that a finding of a violation has been made. A copy of such warning letter issued by the enforcement staff shall be included in the investigation report required by paragraph (a) or (b) of this section.

§ 8.08 Disciplinary committee.

Each exchange shall establish one or more disciplinary committees which shall be authorized by the exchange to determine whether violations have been committed, to accept offers of settlement and to set and impose appropriate penalties. Each such disciplinary committee shall consist of one or more members of the exchange or persons on the staff of the exchange; however, persons on the enforcement staff may not serve on a disciplinary committee.

§ 8.09 Review of investigation report.

The disciplinary committee shall promptly review each investigation report. In the event the disciplinary committee determines that additional investigation or evidence is needed, it shall promptly direct the enforcement staff to conduct its investigation further. Within a reasonable period of time not to exceed 30 days after the receipt of a completed investigation report, the disciplinary committee shall take one of the following actions:

(a) If the disciplinary committee determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and contain a brief statement setting forth the reasons therefor.

(b) If the disciplinary committee determines that a reasonable basis exists for finding a violation which should be adjudicated, it shall direct that the person alleged to have committed the violation be served with a notice of charges and shall proceed in accordance with the rules of this subpart.

§ 8.10 Predetermined penalties.

An exchange may adopt rules which set specific maximum penalties for particular violations. If the rules of an exchange establish predetermined penalties, the disciplinary committee shall have discretion in each case whether to employ the predetermined penalty. If the predetermined penalty is employed, it shall be stated in the notice of charges. In such case, after a hearing on a denied charge where a respondent is found to have committed the violation charged, the disciplinary committee shall impose the predetermined penalty or an appropriate lesser penalty.

§ 8.11 Notice of charges.

The notice of charges shall:

(a) State the acts, practices, or conduct in which the person is alleged to have engaged;

(b) State the rule alleged to have been violated (or about to be violated);

(c) State the predetermined penalty, if any;

(d) Prescribe the period within which a hearing on the charges may be requested;

(e) Advise the person charged that:

(1) He is entitled, upon request, to a hearing on the charges;

(2) If the rules of the exchange so provide, failure to request a hearing within the period prescribed in the notice, except for good cause, shall be deemed a waiver of the right to a hearing; and

(3) If the rules of the exchange so provide, failure in an answer to deny expressly a charge shall be deemed to be an admission of such charge.

§ 8.12 Right to representation.

Upon being served with a notice of charges the respondent shall have the right to be represented by legal counsel or any other representative of his choosing in all succeeding stages of the disciplinary proceeding.

§ 8.13 Answer to charges.

The respondent shall be given a reasonable period of time to file an answer to the charges. The rules of an exchange may provide that:

(a) The answer must be in writing and include a statement that the respondent admits, denies or does not have and is unable to obtain sufficient information to admit or deny each allegation. A statement of a lack of sufficient information shall have the effect of a denial of an allegation.

(b) Failure to file an answer on a timely basis shall be deemed an admission of all allegations contained in the notice of charges.

(c) Failure in an answer to deny expressly a charge shall be deemed to be an admission of such charge.

§ 8.14 Admission or failure to deny charges.

(a) The rules of an exchange may provide that if the respondent admits or fails to deny any of the charges the disciplinary committee may find that the rule violation alleged in the notice of charges for which the respondent admitted or failed to deny any of the

charges has been committed. If the exchange rules so provide, then:

(1) The disciplinary committee shall impose a penalty no greater than the predetermined penalty, if any, stated in the notice of charges for the corresponding violation found to have been committed.

(2) If no predetermined penalty was stated, the disciplinary committee shall impose a penalty for each violation found to have been committed.

(b) The disciplinary committee shall promptly notify the respondent in writing of any penalty to be imposed pursuant to paragraph (a) of this section and shall advise him that he may request a hearing on such penalty within a reasonable period of time, which shall be stated in the notice, but that except for good cause shown no hearing shall be permitted on a penalty imposed pursuant to subparagraph (a)(1) of this section.

(c) The rules of an exchange may provide that if a respondent fails to request a hearing within the period of time stated in the notice he shall be deemed to have accepted the penalty.

§ 8.15 Denial of charges and right to hearing.

In every instance where the respondent has requested a hearing on a charge which is denied, or on a penalty set by the disciplinary committee under § 8.14(a)(2), he shall be given an opportunity for a hearing in accordance with the requirements of § 8.17. The exchange rules may provide that, except for good cause, the hearing shall be concerned only with those charges denied and/or penalties set by the disciplinary committee under § 8.14(a)(2) for which a hearing has been requested.

§ 8.16 Settlement offers.

(a) The rules of an exchange may permit a respondent to submit a written offer of settlement to the disciplinary committee at any time after the investigation report is completed. The disciplinary committee may accept the offer of settlement, but may not alter its terms unless the respondent agrees.

(b) The rules of an exchange may provide that the disciplinary committee, in its discretion, may permit the respondent to accept a penalty without either admitting or denying the rule violations upon which the penalty is based.

(c) If an offer of setlement is accepted by the disciplinary committee, it shall issue a written decision specifying the rule violations it has reason to believe were committed and any penalty to be imposed. Where applicable, the decision shall also include a statement that the respondent has accepted the penalties imposed without either admitting or denying the rule violations.

(d) The respondent may withdraw his offer of settlement at any time before final acceptance by the disciplinary committee. If an offer is withdrawn after submission, or is rejected by the disciplinary committee, the respondent shall not be deemed to have made any admissions by reason of the offer of settlement and shall not be otherwise prejudiced by having submitted the offer of settlement.

§ 8.17 Hearing.

(a) The following minimum requirements shall apply to any hearing required by this subpart:

(1) The hearing shall be fair and shall be conducted before members of the disciplinary committee. The hearing may be conducted before all of the members of the disciplinary committee or a panel thereof, but no member of the disciplinary committee may serve on the committee or panel if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter under consideration.

(2) The respondent shall be entitled in advance of the hearing to examine all books, documents, or other tangible evidence in the possession or under the control of the exchange which are to be relied upon by the enforcement staff in presenting the charges contained in the notice of charges or which are relevant to those charges.

(3) The hearing shall be promptly convened after reasonable notice to the respondent.

(4) The formal rules of evidence need not apply; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing.

(5) The enforcement staff shall be a party to the hearing and shall present its case on those charges and penalties which are the subject of the hearing.

(6) The respondent shall be entitled to appear personally at the hearing.

(7) The respondent shall be entitled to cross-examine any persons appearing as witnesses at the hearing.

(8) The respondent shall be entitled to call witnesses and to present such evidence as may be relevant to the charges.

(9) The exchange shall require persons within its jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. It shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.

(10) If the respondent has requested a hearing, a substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent, the decision is appealed under § 8.19, or is reviewed by the Commission pursuant to section 8c of the Act or part 9 of this chapter. In all other instances a summary record of a hearing is permitted.

(i) The rules of an exchange may provide that the cost of transcribing the record of the hearing shall be borne by a respondent who requests the transcript, appeals the decision pursuant to § 8.19, or whose application for Commission review of the disciplinary action has been granted under part 9 of this chapter. In all other instances, the cost of transcribing the record shall be borne by the exchange.

(b) The rules of an exchange may provide that a penalty may be summarily imposed upon any person within its jurisdiction whose actions impede the progress of a hearing.

§ 8.18 Decision.

Promptly following a hearing conducted in accordance with § 8.17, the disciplinary committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(a) The notice of charges or a summary of the charges;

(b) The answer, if any, or a summary of the answer;

(c) A brief summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;

(d) A statement of findings and conclusions with respect to each charge, including the specific rules which the respondent is found to have violated; and

(e) A declaration of any penalty imposed and the effective date of such penalty.

§ 8.19 Appeal.

The rules of an exchange may permit a respondent to appeal promptly an adverse decision of a disciplinary committee in all or in certain classes of cases. Such rules may require a respondent's notice of appeal to be in writing and to specify the findings, conclusions, and/or penalty to which objection is taken. If the rules of an exchange permit appeal, they shall provide for the following:

(a) The exchange shall establish a board of appeals which shall be authorized to hear appeals of respondents. In addition, the rules of an exchange may provide that the board of appeals may, on its own initiative, order review of a decision by the disciplinary committee within a reasonable

period of time after the decision has been rendered.

(b) No member of the board of appeals shall serve on an appeal or review panel if such member participated in any prior stage of the disciplinary proceeding or if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter. The rules of an exchange may provide that the appeal or review proceeding may be conducted before all of the members of the board of appeals or a panel thereof. Except for good cause shown, the appeal or review shall be conducted solely on the record before the disciplinary committee, the written exceptions filed by the parties, and the oral or written arguments of the parties.

(c) Promptly following the appeal or review proceeding, the board of appeals shall issue a written decision and shall provide a copy to the respondent. The decision shall include a statement of findings and conclusions with respect to each charge or penalty reviewed, including the specific rules which the respondent was found to have violated by the disciplinary committee, and a declaration of any penalty imposed and the effective date of such penalty.

§ 8.20 Final decision.

Each exchange shall establish rules setting forth when a decision rendered pursuant to this subpart B shall become the final decision of such exchange.

Subpart C—Summary Actions

§ 8.25 Member responsibility actions.

An exchange may suspend at any time, or take other summary action against, a person subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the marketplace.

§ 8.26 Procedure for member responsibility actions.

An action pursuant to § 8.25 shall be taken in accordance with an exchange procedure which provides for the following:

(a) The respondent shall, whenever practicable, be served with a notice before the action is taken. If prior notice is not practicable, the respondent shall be served with a notice at the earliest possible opportunity. The notice shall:

(1) State the action,

(2) Briefly state the reasons for the action, and

(3) State the effective time and date and the duration of the action.

(b) The respondent shall have the right to be represented by legal counsel or any other representative of his choosing in all proceedings subsequent to the summary action taken pursuant to § 8.25.

(c) The respondent shall promptly be given opportunity for a subsequent hearing. The hearing shall be fair and shall be held before one or more persons authorized by the exchange to conduct hearings pursuant to this section. The hearing shall be conducted in accordance with the requirements set forth in §§ 8.17(a)(4)–(9) and (b).

(d) Promptly following the hearing provided for in paragraph (c) of this section, the exchange shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(1) A description of the summary action taken,

(2) The reasons for the summary action,

(3) A brief summary of the evidence produced at the hearing,

(4) Findings and conclusions,

(5) A determination that the summary action should be affirmed, modified or reversed, and

(6) A declaration of any action to be taken pursuant to the determination specified in paragraph (d)(5) of this section and the effective date and duration of such action.

(e) The rules of an exchange may permit the respondent to appeal promptly an adverse decision. Such rules shall be established in accordance with the requirements set forth in § 8.19.

§ 8.27 Violations of rules regarding decorum, submission of records or other similar activities.

An exchange may adopt rules which permit the enforcement staff or a designated committee of officials to summarily impose minor penalties against persons within its jurisdiction for violating rules regarding decorum, attire, the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities.

§ 8.28 Final decision.

Each exchange shall establish rules setting forth when a decision rendered pursuant to this subpart C shall become the final decision of such exchange.

Issued in Washington, D.C., by the Commission on September 14, 1978.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-26348 Filed 9-19-78; 8:45 am]

[6740-02]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION; DEPARTMENT OF ENERGY

PART 1—RULES OF PRACTICE AND PROCEDURE

CFR Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: CFR correction.

SUMMARY: This document makes technical changes to paragraph (c) of § 1.36 of Title 18 of the Code of Federal Regulations revised as of April 1, 1977. This correction is necessary because there are now two subparagraphs designated as (15).

FOR FURTHER INFORMATION CONTACT:

Lois Cashell, 202-275-4166.

In 18 CFR § 1.36(c), revised as of April 1, 1977, the second subparagraph numbered (15) should be corrected to read:

(16) Any reasonably segregable portion of a record after deletion of the portions which are exempt under this section.

The subparagraph numbered (16) should be renumbered as (17).

Dated: September 13, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-26256 Filed 9-18-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Virginiamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The agency is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed

by Smith Kline Animal Health Products for additional uses of virginiamycin in swine feeds. Concurrently, this final rule revises the regulation regarding tolerances for safe residues of virginiamycin to reflect residue levels based on relative consumption rates of edible tissues.

EFFECTIVE DATE: September 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Smith Kline Animal Health Products, Division of Smith Kline Corp., 1500 Spring Garden Street, Philadelphia, Pa. 19101, filed supplemental NADA's (95-513, 91-467) providing for the safe and effective use of virginiamycin for addition to the feed of swine weighing from 120 pounds to market weight at 5 to 10 grams (g) per ton for increased rate of weight gain and at 5 g per ton for improved feed efficiency.

The Agency is revising the current tolerance for residues of virginiamycin in edible swine tissues, taking into consideration the following relevant factors:

1. Probable consumption of food bearing or containing residues of the drug.
2. The cumulative effect of consumption of residues of such drug in food.
3. Safety factors appropriate for the use of the drug.

On the basis of these factors, the current tolerance of 0.1 part per million (p.p.m.) for negligible residues is revised to provide for 0.4 p.p.m. in kidney, skin, and fat, 0.3 p.p.m. in liver, and 0.1 .p.p.m. in muscle. This approval does not constitute a reaffirmation of the safety and effectiveness of the previously approved conditions of use of the drug.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 556 and 558 are amended as follows:

1. In part 556, § 556.750 is revised to read as follows:

§ 556.750 Virginiamycin.

Tolerances are established for negligible residues of virginiamycin in edible tissues of swine as follows:

(a) 0.4 part per million in kidney, skin, and fat.

(b) 0.3 part per million in liver.

(c) 0.1 part per million in muscle.

2. In Part 558, § 558.635 is amended by revising paragraph (f)(4) and adding new paragraph (f)(5) to read as follows:

§ 558.635 Virginiamycin.

* * * * *

(f) * * *

(4) *Amount per ton.* Administer 10 grams per ton from weaning to 120 pounds body weight followed by 5 grams per ton to market weight.

(i) *Indications for use.* Increased rate of weight gain and improved feed efficiency.

(ii) *Animal weight.* For continuous use from weaning to market weight.

(5) *Amount per ton.* Administer 10 grams per ton from weaning to 120 pounds body weight followed by 5 to 10 grams per ton to market weight.

(i) *Indications for use.* Increased rate of weight gain and improved feed efficiency for swine up to 120 pounds body weight; increased rate of weight gain for swine from 120 pounds to market weight.

(ii) *Animal weight.* For continuous use from weaning to market weight.

Effective date. This regulation is effective September 19, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: September 11, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-26107 Filed 9-18-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4482]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the national flood insurance program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the national flood insurance program (NFIP) at: P.O. Box 34294, Bethesda, Md. 20034, phone 800-638-6620.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The national flood insurance program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in some of these communities by publishing a flood hazard boundary map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, re-

quires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
•	•	•	•	•	•
Kansas	McPherson	Unincorporated areas	Aug. 30, 1978, emergency	June 23, 1977	200214-A
New York	Livingston	Livonia, village of	do	Jan. 10, 1975	361453
Mississippi	Union	Myrtle, town of	Sept. 1, 1978, emergency	Jul. 23 1977	230235-A
Nebraska	Antelope	Clearwater, village of	do	Apr. 2, 1976	310252
New York	Jefferson	Adams, town of	do	May 31, 1974 and May 7, 1976.	360324-B
Do	Essex	Elizabethtown, village of	do	Jan. 24, 1975	361491
Pennsylvania	Berks	Centerport, borough of	Aug. 31, 1978, emergency	Nov. 22, 1974	420129
Florida	Indian River	Unincorporated areas	July 14, 1972, emergency July 3, 1978, regular, Aug. 1, 1978, suspended, Aug. 31, 1978, reinstated.	Dec. 20, 1974	120119-A
North Carolina	Wake	Garner, town of	Nov. 29, 1974, emergency, July 3, 1978, regular, July 3, 1978, suspended Aug. 31, 1978, reinstated.	Jul. 19, 1974	370240-B
Arkansas	Cross	Unincorporated areas	Sept. 4, 1978, emergency	June 7, 1977	050056-A
Louisiana	Allen Parish	do	do	do	220009-A
Wisconsin	Lafayette	Shullsburg, city of	do	May 17, 1974 and May 23, 1976.	550230-A
Michigan	Huron	Caseville, township of	Nov. 9, 1973, emergency, Dec. 1, 1977, regular, July 17, 1978, suspended, Sept. 1, 1978, reinstated.	Jan. 17, 1975	260257-A

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 8, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-26083 Filed 9-18-78; 8:45 am]

[4210-01]

[Docket No. FI 4483]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the national flood insurance program (NFIP). The identification of such areas is to provide guidance to communities on the reduction of property losses, by the adoption of appropriate flood plain management, or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The date listed in the 8th column of the table or 30 days after the date of this FEDERAL REGISTER publication (Oct. 19, 1978), whichever is later.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, requires the purchase of flood insurance as a condition of Federal financial assistance of insurable property if such assistance is:

(1) For acquisition and construction of buildings as defined in part 1909 of title 24 of the Code of Federal Regulations, and

(2) For buildings located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

For communities participating in the NFIP (see the 5th column in the table for a community's program status), this requirement applies on the date listed in the 8th column. For communities not participating in the program, section 202 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area effective 1 year from the hazard identification date (the date in the 8th column of the table).

This 30-day period before the map action becomes effective does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of 6 months to establish that it is not seriously flood prone or that such flood hazards

as may have existed have been corrected by floodworks or other flood control methods. The 6 months period shall be considered to begin 30 days after the date of publication in the FEDERAL REGISTER (Oct. 19, 1978) or the effective date of the flood hazard boundary map, whichever is later.

Similarly, the 1 year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the FEDERAL REGISTER (Oct. 19, 1978) or the effective date of the flood hazard boundary map, whichever is later.

This identification is made in accordance with Part 1915 of Title 24 of the Code of Federal Regulations as authorized by the national flood insurance program (42 U.S.C. 4001-4128).

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 1915.3 List of communities with special hazard areas (FHBMs in effect).

State, county, community name and number of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Alabama, Monroe, Monroe County [1] 0001A-0018A.	010325	N-5	I	F	Aug. 18, 1978	Aug. 18, 1978	Judge Opha Lee Biggs, P.O. Box 665, Monroeville, Ala. 36460, 205-743-3782.
Georgia, Tattnall, Tattnall County, [1] 0001A-0009A.	130471	N-5	I	F	do	do	Frank McCall, Chairman, County Commission, P.O. Box 25, Reidsville, Ga. 30453, 912-557-4335.
Illinois, Vermilion, city of Danville, 0001B-0002B.	170662	E-8, 11, 12, 14	I	F	May 17, 1974, Nov. 1, 1975.	do	Clark Baker, city engineer, 402 North Hazel, Danville, Ill. 61832, 217-446-0803.
Illinois, Cook, village of Matteson, 0001B.	170123	E-8, 11, 12, 14	I	F	Apr. 12, 1974, June 25, 1976.	do	Joseph T. Feehery, vice president, 3625 West 215th Street, Matteson, Ill. 60443, 312-748-1559.
Indiana, White, White County, [1] 0002A-0003A, 0005A-0006A, 0008A.	180447	N-5	I	F	Aug. 18, 1978	do	Charles Kreeck, director of planning and zoning department, P.O. Box 851, Monticello, Ind. 47960, 219-583-7355.
Michigan, Menominee, township of Menominee, 0001A-0006A.	260702	N-5	I, C	F	do	do	Arthur Ostrenga, township supervisor, R.R. No. 1, Wallace, Mich. 49893, 906-863-6840.
North Carolina, Harnett, Harnett County, [1] 0001A-0008A.	370328	N-5	I	F	do	do	M. H. Brock, manager, P.O. Box 758, Lillington, N.C. 27546, 919-893-2091.
North Carolina, Randolph, Randolph County, [1] 0001A-0012A.	370195	E-10, 11, 12, 14	I	F	Jan. 3, 1975	do	Frank Boling, manager, Courthouse, 146 Worth St., Asheboro, N.C. 27203, 919-629-2131.
North Carolina, Columbus, town of Tabor City, 0001B.	370070	E-8, 11, 12, 14	I	F	June 7, 1974, Mar. 28, 1975.	do	R. C. Soles, mayor, 4th St., Tabor City, N.C. 28463, 919-653-3458.
Tennessee, Smith, town of South Carthage, 0001B.	470183	E-11, 12, 14	I	F	Aug. 23, 1974, Aug. 15, 1975.	do	L. B. Franklin, mayor, P.O. Box 28, South Carthage, Tenn. 37030, 615-735-2727.
Idaho, Cassia, city of Malta, 0001A	160197A	N-11, 12	I	F	Dec. 13, 1974	Aug. 22, 1978	Hon. Wallace Briggs, mayor, City Hall, Malta, Idaho 83343, 208-642-2529.
Kansas, unincorporated area, Marion County, 0001A-0012A.	200593A	N-5, 9	I	F	Aug. 22, 1978	do	Mr. M. P. Thompson, Jr., Chairman, Board of County Commissioners, County Courthouse, Marion, Kans. 66861, 316-382-2185.
Massachusetts, Berkshire, town of West Stockbridge, 01A-02A,04A-06A, 08A.	250045A	E-10, 11, 12	I	F	July 26, 1974	do	Mr. Leo Angelini, chairman, Board of Selectmen, Main St., West Stockbridge, Mass. 01266, 413-232-8539.
New Mexico, unincorporated area, Otero County, 0001A-0002A, 0004A-0010A, 0012A-0016A, 0018A-0019A, 0021A-0028A, 0032A-0035A, 0037A, 0039A-0043A, 0047A-0052A, 0054A-0068A.	350044A	E-8,11,12	I	F	Aug. 9, 1974	do	Ms. Virginia Yearly, administrative assistant, County Courthouse, Box 1749, Alamogordo, N. Mex. 88310, 505-437-7427.
Pacific territory, unincorporated territory, Truk District, 0001A-0004A.	750005A	N-5	C	F	Aug. 22, 1978	do	Mr. Adrian P. Winkel, High Commissioner, Office of the High Commissioner, Capitol Hill, Saipan, Mariana Islands 96950.
South Dakota, McPherson, city of Eureka, 01A.	460173A	N-11, 12	I	F	July 18, 1976	do	Hon. Fred Aman, mayor, 613 Seventh St., Eureka, South Dakota 57437, 605-284-2441.
Texas, unincorporated area, Hunt County, 0001A-0014A.	480363A	N-5, 9	I	F	Aug. 22, 1978	do	Hon. Ed Terrell, county judge, Office of the County Judge, County Courthouse, Greenville, Tex. 75401.
Illinois, Lee, Lee County, [1] 0004B, 0007B.	170413	E-10, 11, 12, 14	I	F	Jan. 10, 1975, June 2, 1978.	Aug. 25, 1978	John E. Stouffer, clerk, P.O. Box 385, Courthouse, Dixon, Ill. 61021, 815-288-3309.
Illinois, Whiteside, Whiteside County, [1] 0001A-0009A.	170687	E-5	I	F	Aug. 25, 1978	do	Kenneth Murphy, county zoning officer, Courthouse, Morrison, Ill. 61270, 815-772-7201.

State, county, community name and number of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard P/M/E	Identification date(s)	Effective date of this map action	Local map repository
Minnesota, Lake of the Woods, Lake of the Woods County, 0001B, 0003B-0004B, 0006B-0008B[1].	270654	E-10, 11, 12, 14	I	P	Nov. 11, 1977	do	Dean Iribeck, auditor, Courthouse, Baudette, Minn. 56623, 218-634-2336.
North Carolina, Johnston, Johnston County,[1] 0091A-0012A.	370138	E-10, 11, 12, 14	I	P	Jan. 3, 1975	do	Kramer Jackson, County Administrator, P.O. Box 1049, Smithfield, N.C. 27577, 919-934-5963.
North Carolina, Wilkes, Wilkes County, 0001A, 0003A-0011A.	370256	E-10, 11, 12, 14	I	P	Dec. 20, 1974	do	John T. Barber, County manager, Wilkes County Office Bldg., Wilkesboro, N.C. 28697, 919-667-5111.
Ohio, Crawford, Crawford County,[1] 0002B, 0004B, 0006B.	390311	N-11, 14	I	P	Jan. 20, 1978	do	Richard Shealy, chairman, county commission, Courthouse, Bucyrus, Ohio 44820, 419-562-5376.
Ohio, Logan, village of DeGraff, 0001A.	390609	E-8, 11, 12, 14	I	P	July 18, 1975	do	Charles Roby, mayor, Village Hall, DeGraff, Ohio 43318, 513-585-5972.
Tennessee, Grundy, Grundy County,[1] 0001A-0003A, 0005A.	470250	N-5	I	P	Aug. 25, 1978	do	Roy Partin, judge, Courthouse, judges office, Altamont, Tenn. 37301, 615-692-3718.
Virginia, Albemarle, Albemarle County,[1] 0002A-0011A.	510006	E-5	I	P	do	do	Guy Agnor, county administrator, County Office Bldg., Courthouse Square, Charlottesville, Va. 22901, 804-296-5841.
Iowa, Wright, City of Woolstock, 0001A.	190827A	N-11, 12	I	P	June 25, 1976	Aug. 23, 1978	Hon. Robert Kastler, mayor, P.O. Box 57, Woolstock, Iowa 50599, 515-839-5710.
Oklahoma, Beckman, city of Elk City, 0001B.	400010B	E-8, 11, 12	I	P	May 24, 1974, June 18, 1976.	do	Mr. Bob Marable, city manager, P.O. Box 527, Elk City, Okla. 73644, 405-225-3230.
Wyoming, unincorporated area, Teton County, 0001A-0020A, 0022A-0030A, 0032A-0033A.	560094A	E-5	I	P	Aug. 29, 1978	do	Mr. William Ashley, chairman, Board of County Commissioners, County Courthouse, Jackson, Wyo. 83001, 307-733-4430.
Wyoming, unincorporated area, Washakie County, 0009A.	560089A	N-5	I	P	do	do	Mr. Robert A. Swander, chairman, Office of County Commissioners, Worland, Wyo. 82401, 307-347-3131.
Alabama, Marengo, Marengo County,[1] 0001A-0012A.	010156	E-5	I	P	Sept. 1, 1978	Sept. 1, 1978	James A. William, engineer, Courthouse, Linden, Ala. 36748, 205-295-5226.
Florida, Jackson, Jackson County,[1] 0001A-0013A.	120125	E-10, 11, 12, 14	I	P	Dec. 13, 1974	do	Thomas Tyus, chairman, County Board, P.O. Drawer 510, Marianna, Fla. 32446, 904-482-2501.
Indiana, Carroll, Carroll County,[1] 0001A-0006A.	180019	E-10, 11, 12, 14	I	P	Oct. 18, 1974	do	Ray Myers, zoning administrator, County Courthouse, Planning Commission, Delphi, Ind. 46923, 317-564-4463.
Indiana, Noble, town of Rome City, 01	180385A	E-12, 14	I	P	July 11, 1975	do	Fred Lamble, director, Noble County Planning Commission, Courthouse, Albion, Ind. 46701, 219-636-7217.
Kentucky, Pike, Pike County,[1] 0001B-0004B, 0006B, 0007B, 0009B, 0010B.	210298	E-11, 12, 14	I	P	Sept. 9, 1977	do	Wayne T. Rutherford, judge, Courthouse, Main St., Pikeville, Ky. 41501, 606-432-2553.
Minnesota, Polk, city of Beltrami, 0001B.	270362	E-11, 12, 14	I	P	Aug. 23, 1974, Oct. 17, 1975.	do	T. D. Anderson, mayor, City Hall, Beltrami, Minn. 56517, 218-926-3495.
Minnesota, Swift, city of Kerkhoven, 01.	270472B	E-12, 14	I	P	May 3, 1974, Nov. 21, 1975.	do	William Doering, mayor, City Hall, Kerkhoven, Minn. 56252, 612-264-2531.
Mississippi, Simpson, city of Mendenhall, 0001B.	280159	E-8, 11, 12, 14	I	P	June 14, 1974, Oct. 17, 1975.	do	Ray Layton, mayor, P.O. Box 487, Mendenhall, Miss. 39114, 601-847-1212.
North Carolina, Rutherford, Rutherford County[1] 0002A-0008A.	370217	E-10, 11, 12, 14	I	P	Jan. 10, 1975	do	Max Padgett, manager, Courthouse, Rutherford, N.C. 28671, 704-287-3847.
South Carolina, Greenwood, Abbeville, Laurens, town of Ware Shoals, 0001A.	450248	N-5	I	P	Sept. 1, 1978	do	G. H. Frederick, Jr., mayor, P.O. Box 510, Ware Shoals, S.C. 29692, 803-456-2121.
Tennessee, Morgan, Morgan County,[1] 0001A-0008A.	470139	N-10, 11, 12, 14.	I	P	Jan. 17, 1975	do	J. D. McCartt, judge, Courthouse, P.O. Box 387, Wartsburg, Tenn. 37887, 615-346-6223.
Wisconsin, Eau Claire, city of Altoona, 0001B.	550126	E-8, 11, 12, 14	I	P	Jan. 9, 1974, June 18, 1976.	do	Eugene M. Taras, P. E., director of public works, 1303 Lynn Ave., Altoona, Wis. 54720, 715-834-2283.
Alaska, unorganized borough, city of Aniak, 0001A.	020033A	E-5	I	P	Sept. 5, 1978	Sept. 5, 1978	Hon. Anna L. Ivan, mayor, P.O. Box 24, Aniak, Alaska 99557, 907-675-4326.

State, county, community name and number of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
California, Fresno, city of Clovis, 0001C.	060044C	N-11, 12, 15	I	F	Aug. 23, 1977, May 16, 1978.	do	Mr. Leon P. Lancaster, director of public works, 1033 Fifth St., Clovis, Calif. 93612, 209-298-8061.
California, Fresno, city of Orange Cove, 0001B.	060052B	E-11, 12	I	F	May 10, 1974, Apr. 11, 1975.	do	Hon. Kenneth E. Mason, mayor, 555 Sixth St., Orange Cove, Calif. 93646, 209-626-4488.
Iowa, Wright, city of Goldfield, 0001A	190584A	N-8, 11, 12	I	F	June 25, 1976	do	Mr. Clarence H. Cooper, city clerk, Office of City Clerk, Goldfield, Iowa 50542, 515-825-3613.
Iowa, Monona, city of Whiting, 0001A.	190684A	N-11, 12	I	F	July 2, 1976	do	Ms. Dorothy Carlson, city clerk, City Hall, Whiting, Iowa 51063, 712-458-2414.
Louisiana, De Soto Parish, town of Logansport, 0001A.	220336A	N-8, 11, 12	I	F	Aug. 15, 1975	do	Hon. M. P. Wells, mayor, Town Hall, Logansport, La. 71049, 318-697-5350.
New Mexico, Taos, town of Taos, 0001B.	350080B	E-8, 11, 12	I	F	May 17, 1974, May 28, 1976	do	Hon. Phillip Cantu, Jr., mayor, P.O. Drawer "M", Taos, N. Mex. 87571, 505-758-4283.
North Dakota, McKenzie, city of Alexander, 0001A..	380055A	E-11, 12	I	F	Dec. 13, 1974	do	Hon. Edward J. Taylor, Mayor, City Hall, Alexander, N. Dak. 58831, 701-828-3338.
North Dakota, Grand Fork, city of Emerado, 0001A.	380034A	E-12	I	F	Sept. 10. 1976	do	Hon. Joe Bader, mayor, City Hall, Emerado, N. Dak. 58228, 701-594-2872.
South Dakota, Pennington, town of Hill City, 0001A.	460116A	E-8, 11, 12	I	F	Apr. 23, 1976	do	Mr. William A. Wyman, attorney at law, Suite 212, 624 Sixth St., Rapid City, S. Dak. 57701. 605-342-4164.
South Dakota, Edmunds, city of Ipswich, 0001B.	460184B	N-8, 11	I	F	Nov. 5, 1976, Feb. 14, 1978.	do	Hon. Peter Geffre, mayor, City Hall, Ipswich, S. Dak. 57451, 605-426-4291.
South Dakota, Turner, city of Marion, 01A.	460197A	N-12	I	F	July 2, 1976	do	Mr. Don Tieszen, city clerk, City Hall, Marion, S. Dak. 57043, 605-648-3721.
Pennsylvania, Lycoming, township of Susquehanna, 01-03.	420659C	E-8, 11, 12, 14	I	F	Oct. 12, 1973, Oct. 24, 1975, July 1, 1977.	Sept. 8, 1978	Richard D. Forsburg, Sr., secretary, R. D. No. 4, Williamsport, Pa. 17701, 717-326-0356.
South Carolina, Anderson, town of Williamston, 0001B.	450020	E-11, 12, 14	I	F	May 31, 1974, Nov. 14, 1975.	do	Marion Middleton, mayor, 43 East Main St., Williamston, S.C., 29697, 803-847-7473.
Wisconsin, Iron, Iron County,[1] 0001A-0010A.	550182	E-10, 11, 12, 14	I	F	Feb. 14, 1975	do	Mr. Kinney, zoning administrator, Courthouse, Hurley, Wis. 53534, 715-561-2695.
Minnesota, Morrison, city of Pierz, 01.	270301B	E-11, 12, 14	I	F	June 7, 1974, Apr. 18, 1975.	do	Leander Meyer, mayor, City Hall, Pierz, Minn. 56364, 612-468-6388.
Minnesota, Traverse, city of Wheaton, 01.	270611A	E-12, 14	I	F	Oct. 25, 1974	do	Edward Barlage, mayor, City Hall, Wheaton, Minn. 56296, 612-563-4110.
Mississippi, Clarke, village of Pachuta, 01.	280219A	N-11, 12, 14	I	F	Nov. 8, 1974	do	L. C. Rhoden, mayor, P.O. Box 27, Pachuta, Miss. 39347, 601-776-6015.
Ohio, Lawrence, village of Athalia, 01.	390698A	E-12, 14	I	F	Aug. 1, 1975	do	Kenneth L. Dillon, mayor, Village Hall, Athalia, Ohio 45669, 614-886-6171.
Ohio, Muskingum, village of New Concord, 01.	390847A	N-5	I	F	Sept. 8, 1978	do	L. Coleman Knight, mayor, Lakeside Drive, New Concord, Ohio 43762, 614-826-4173.
Minnesota, Wadena, city of Aldrich, 0001A.	270492	N-12, 14	I	F	Feb. 7, 1975	do	Ervin Kroesch, mayor, City Hall, Aldrich, Minn. 56434, 218-445-5181.
Minnesota, Lac Qui Parle, city of Boyd, 01.	270240A	E-11, 12, 14	I	F	Oct. 25, 1974	do	Ronald Stone, mayor, City Hall, Boyd, Minn. 56218, 612-855-2242.
Minnesota, Wabasha, city of Kellogg, 01.	270655A	N-11, 12, 14	I	F	Jan. 31, 1975	do	William LaVigne, mayor, City Hall, Kellogg, Minn. 55945, 507-767-4403.
Minnesota, Morrison, Cass, city of Motley, 0001B.	270300	N-11, 12, 14	I	F	Aug. 2, 1974, Dec. 19, 1975.	do	Bill Postel, mayor, City Hall, Motley, Minn. 56466, 218-352-6200.
Illinois, Macon, Macon County[1] 0001A-0007A.	170928	N-5	I	F	Sept. 8, 1978	do	William M. Tangney, clerk, 253 East Wood St., Decatur, Ill. 62523, 217-429-5108.
Illinois, McLean, McLean County,[1] 0001A-0014A.	170931	N-5	I	F	do	do	Bambridge Peterson, county administrator, Courthouse, Bloomington, Ill. 61701, 309-827-5311
Illinois, Vermilion, village of Rossville, 01.	170966A	N-5	I	F	do	do	Terry Prillaman, vice president, 113 East Attica, Rossville, Ill. 60963, 217-748-6914.
Kentucky, Logan, city of Adairville, 0001A.	210353	N-5	I	F	do	do	George Arnold, mayor, City Hall, Adairville, Ky. 42202, 502-539-6731.

State, county, community name and number of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Kentucky, Montgomery, city of Jeffersonville, 0001A.	210358	N-5	I	F	...do...	...do...	Ray Bartley, city president, Route No. 2, Jeffersonville, Ky. 40334, 606-498-5507.
Alabama, Clarke, city of Thomasville, 0001A-0002A.	010041	E-11, 12, 14	I	F	Aug. 1, 1975	...do...	John D. McDonald, mayor, P.O. Box 127, Thomasville, Ala. 36784, 205-636-5327.
Alabama, Bibb, town of West Blocton, 0001A.	010014	E-8, 11, 12, 14	I	F	Nov. 8, 1974	...do...	Frank Ferrire, mayor, P.O. Box 187, West Blocton, Ala. 35184, 205-938-7632.
Georgia, Effingham, municipality of Springfield, 0001A.	130427	E-11, 12, 14	I	F	Apr. 4, 1975	...do...	Doris Flythe, mayor, P.O. Box 1, Springfield, Ga., 31329, 912-754-6926.
Illinois, Sangamon, village of Divernon, 01.	170949A	N-5	I	F	Sept. 6, 1978	...do...	Sherman Parker, vice president, Village Hall, Divernon, Ill. 62530, 217-628-3416.
California, Humboldt, city of Arcata, 0001B.	060061B	E-8, 11, 12	C	F	June 28, 1974, Dec. 5, 1975	Sept. 12, 1978	Mr. Roger A. Storey, city manager, 736 F St., Arcata, Calif. 95521, 707-822-5951.
California, Colusa, city of Williams, 0001B.	060024B	E-11, 12	I	F	Mar. 29, 1974, Oct. 10, 1975	...do...	Hon. L. Glen Manor, mayor, 810 E St., Williams, Calif. 95987, 916-473-5421.
Colorado, Logan, town of Iliff, 0001A.	080207A	N-12	I	F	Dec. 27, 1974	...do...	Hon. Joe Gerk, mayor, town of Iliff, Box 167, Iliff, Colo. 80736 303-522-8163.
Maine, Oxford, town of Upton, 0001A-0002A.	230342A	E-5	I	F	Sept. 12, 1978	...do...	Mr. Fred S. Judkin, town selectman, Town Hall, Upton, Maine 04261, 207-533-2183.
South Dakota, unincorporated area, Roberts County, 0001A-0004, 0006A-0007A.	460286A	N-5, 9	I	F	...do...	...do...	Mr. Leroy Larson, chairman, Board of County Commissioners, County Courthouse, Sisseton, S. Dak. 57262, 605-698-7336.
Alabama, St. Clair, town of Branchville, 01.	010372A	N-5	I	F	Sept. 15, 1978	Sept. 15, 1978	E. O. Crocker, Jr., mayor, Route 1, Box 23, Branchville, Ala. 35120, 205-629-2453.
Alabama, Elmore, city of Millbrook, 0001A.	010370	N-5	I	F	...do...	...do...	Reginold Minter, mayor, Box C, Millbrook, Ala. 36054, 205-285-6423.
Florida, Okaloosa, town of Shalimar, 0001A.	120579	E-5	C	F	...do...	...do...	Curtis Bullock, Jr., mayor, P.O. Box 815, Shalimar, Fla. 32579, 904-651-5723.
Georgia, Madison, municipality of Danielsville, 0001A.	130479	N-5	I	F	...do...	...do...	Andrew Griffith, mayor, P.O. Box 39, Danielsville, Ga. 30635, 404-795-2189.
Georgia, Madison, municipality of Ila, 0001A.	130481	N-5	I	F	...do...	...do...	Joe Smith, mayor, Office of the Mayor, Ila, Ga. 30647, 404-795-2300.
Georgia, Laurens, municipality of Montrose, 0001A.	130482	N-5	I	F	...do...	...do...	W. L. Cook, mayor, P.O. Box 33, Montrose, Ga. 31065, 912-376-4512.
Illinois, Ogle, village of Hill Crest, 01.	170956A	N-5	I	F	...do...	...do...	Kathleen Anderson, vice president, R.R. No. 1, Rochelle, Ill. 61068, 815-562-7770.
Illinois, Franklin, village of West City, 0001A.	170872	E-8, 11, 12, 14	I	F	Mar. 28, 1975	...do...	J. B. Kearny, president, 1000 Blakely St., Benton, Ill. 62812, 618-439-4272.
Indiana, Marion, city of Indianapolis, 0001B-0006B.	180159	E-8, 11, 12, 14	I	F	May 17, 1974, Sept. 24, 1976.	...do...	William Abrams, principal planner, division of planning and zoning 2041 City County Bldg., Indianapolis, Ind. 46204, 317-633-3434.
Kentucky, Ohio, City of Hartford, 0001A.	210357	N-5	I	F	Sept. 15, 1978	...do...	Hayward Spinks, mayor, 114 Washington, Hartford, Ky., 42347, 502-298-3512.
Minnesota, Koochiching, city of Big Falls, 0001B.	270234	E-11, 14	I	F	Aug. 30, 1974, July 25, 1975.	...do...	Richard Graham, mayor, City Hall, Big Falls, Minn. 56627, 218-276-4141.
Minnesota, Morrison, city of Bowlus, 01.	270293A	N-12, 14	I	F	Oct. 25, 1974	...do...	Roger Benusa, mayor, City Hall, Bowlus, Minn. 56314, 612-584-5237.
Minnesota, Winona, city of Rollingstone, 01.	270530B	E-11, 12, 14	I	F	Aug. 2, 1974, Oct. 31, 1975.	...do...	Lawrence Green, mayor, City Hall, Rollingstone, Minn. 55969, 507-689-2231.
Mississippi, Pontotoc, Pontotoc County,[1] 0001A-0009A.	280234	E-10, 11, 12, 14	I	F	Nov. 29, 1974	...do...	Grady O. Baker, president, board of supervisors, P.O. Box 269, Pontotoc, Miss. 38863, 601-489-3451.
North Carolina, Franklin, Franklin County,[1] 0001A-0003A, 0005A-0011A.	370377	N-5	I	F	Sept. 15, 1978	...do...	Bobby Strickland, county chairman, 113 Market St., Louisburg, N.C. 27549, 919-496-5994.
Ohio, Richland, village of Butler, 01.	390605A	E-11, 12, 14	I	F	July 25, 1975	...do...	Glen Shock, mayor, Elm St., Butler, Ohio 44822, 419-883-2481.
Ohio, Pickaway, city of Circleville, 0001B.	390447	E-8, 11, 14	I	F	April 12, 1974, Nov. 28, 1975.	...do...	Frank E. Barnhill, mayor, 127 South Court St., Circleville, Ohio 43113, 614-474-6142.

State, county, community name and number of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Ohio, Guernsey, village of Cumberland, 01.	390824A	N-5	I	F	Sept. 15, 1978...	...do...	James E. Keys, mayor, Route No. 1, Cumberland, Ohio 43732, 614-638-2141.
Ohio, Fulton, village of Fayette, 01.....	390829A	N-5	I	F	...do...	...do...	James I. Marlatt, mayor, Village Hall, Fayette, Ohio 43521, 419-237-2661.
Ohio, Belmont, village of Holloway, 01.	390028B	E-11, 14	I	F	Aug. 23, 1974, Aug. 29, 1975.	...do...	John Stewart, mayor, Holloway, Ohio 43985, 614-968-3535.
South Carolina, Hampton, town of Luray, 01.	450242A	N-5	I	F	Sept. 15, 1978...	...do...	J. D. Rouse, mayor, P.O. Box 185, Luray, S.C. 29932, 803-626-2207.
Tennessee, Shelby, city of Germantown, 0001A-0002A.	470353	E-5	I	F	...do...	...do...	W. A. Nance, mayor, P.O. Box 28140, Germantown, Pa. 38138, 901-754-7726.
Tennessee, Obion, town of Samburg, 01.	470379A	N-5	I	F	...do...	...do...	Joe Byrd, mayor, P.O. Box 117, Samburg, Tenn. 38254, 901-538-9291.
Tennessee, Wilson, city of Watertown, 01.	470380A	N-5	I	F	...do...	...do...	R. B. Beckwith, mayor, Public Square, Watertown, Tenn. 37184, 615-237-3326.
Wisconsin, Barron, Barron County,[1] 0001A-0012A.	550568	E-5	I	F	...do...	...do...	Dale Thorsbakken, zoning administrator, Courthouse, Barron, Wis. 54812, 715-537-5566.
Arkansas, St. Francis, town of Caldwell, 0001B.	050185B	E-11, 12	I	F	Nov. 1, 1974, Oct. 10, 1975.	Sept. 19, 1978...	Hon. Mrs. John C. Lindsey, Jr., mayor, Town Hall, Caldwell, Ark. 72322, 501-633-1163.
Colorado, Pueblo, town of Boone, 0001B.	080148B	N-11, 12	I	F	Sept. 6, 1974, Jan. 9, 1976.	...do...	Hon. Ralph E. Wyant, mayor, P.O. Box 13, Boone, Colo. 81025, 303-947-3311.
Colorado, Logan, city of Sterling, 0001A.	080294A	E-8, 11, 12, 15..	I	F	Sept. 19, 1978...	...do...	Mr. Marvin McElwain, city manager, P.O. Box 590, Sterling, Colo. 80751, 303-522-2757.
Colorado, Eagle, town of Vail, 0001A-0002A.	080054A	E-5	I	F	...do...	...do...	Hon. John. A. Dobson, mayor, Office of Mayor, 75 South Frontage Rd. West, P.O. Box 100, Vail, Colo. 81657, 303-476-5613.
Iowa, Sioux, city of Chatsworth, 0001A.	190509A	N-11, 12	I	F	Aug. 13, 1976...	...do...	Mr. Franklin Hemmelrick, city clerk, City Hall, Chatsworth, Iowa 51011, 712-552-1671.
Iowa, Jackson, city of Green Island, 0001B.	190159B	N-8, 11, 12	I	F	Oct. 25, 1974, Apr. 23, 1976.	...do...	Hon. Wayne Rohling, mayor, City Hall, Green Island, Iowa, 319-682-7401.
Kansas, Franklin, city of Lane, 0001A.	200103A	N-11, 12	I	F	Dec. 27, 1974....	...do...	Hon. Homer White, mayor, City Hall, Lane, Kans. 66042, 913-294-5331.
North Dakota, Walsh, city of Fordville, 0001A.	380170A	N-11,12	I	F	June 4, 1976.....	...do...	Hon. Donald Casement, mayor, City Hall, Fordville, N. Dak. 58231, 701-229-3295.
Oregon, Columbia, city of Clatskanie, 0001B.	410035B	E-8, 11, 12	I	F	Dec. 7, 1973, Nov. 21, 1975.	...do...	Hon. George E. Long, mayor, P.O. Box 9, Clatskanie, Oreg. 97016, 503-728-2622.
Texas, Colorado, Colorado County Water Control Improvement District No. 2, 0001A.	481489A	E-5	I	F	Sept. 19, 1978...	...do...	Mr. David Schlurrin, Colorado County W.C.I.D. No. 2, P.O. Box 317, Garwood, Tex., 713-836-7937.

[1] Unincorporated areas.

FINAL LIST CODES:
1. Conversion to regular program with FIRM (elevations determined).
2. Conversion to regular program with FIRM (no elevations determined).
3. Conversion to regular program with no special flood hazard areas—no FIRM.
4. Conversion to regular program with no special flood hazard areas—no FIRM; recission of FHBM effective on same date as conversion.
5. Initial FHBM.
6. Revision—change of elevation; revised FIRM.
7. Revision—change of zone designation; revised FIRM.
8. Revision—corporate limit changes.
9. Revision—drafting corrections; printing errors.
10. Revision—curvilinear.
11. Revision—add flood hazard area.
12. Revision—reduce flood hazard area.
13. Revision—FEDERAL REGISTER omission.
14. Revision—refunds possible.
15. Attention! A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.

R—Regular program; E—Emergency program; N—not in program.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1969), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 8, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-26084 Filed 9-18-78; 8:45 am]

[4310-10]

Title 30—Mineral Resources

CHAPTER III—BOARD OF SURFACE MINING AND RECLAMATION APPEALS, DEPARTMENT OF THE INTERIOR

PART 301—PROCEDURES UNDER SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

PART 302—PROCEDURES UNDER FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT OF 1966

Revision and Revocation of Procedural Rules

SEPTEMBER 8, 1978.

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This action amends the heading to chapter III of Title 30, Code of Federal Regulations, and revises part 301 to provide a cross reference to subpart L of 43 CFR Part 4, which contains procedural regulations applicable to adjudicatory proceedings before administrative law judges and the Interior Board of Surface Mining and Reclamation Appeals. It also revokes part 302 of chapter III of title 30, which is now obsolete. The amendments are technical in nature and will reflect organizational changes made as a result of recent mining legislation.

EFFECTIVE DATE: September 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Frances A. Patton, Special Assistant to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-557-1500.

SUPPLEMENTARY INFORMATION: The Department has established the Interior Board of Surface Mining and Reclamation Appeals, with authority to exercise appellate and other review functions of the Secretary under the Surface Mining Control and Reclamation Act of 1977, 91 Stat. 445, 30 U.S.C. 1201 et seq., and has promulgated regulations applicable to adjudicatory proceedings before administrative law judges and the Interior Board of Surface Mining and Reclamation Appeals, in surface mining control and reclamation matters, within 43 CFR Part 4, Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals. Also, the Department has abolished the Interior Board of Mine Operations Appeals, effective March 9, 1978, upon the creation of the Federal Mine Safety and Health Review Commission, pursuant to the Federal Mine Safety and Health Act of 1977, 83 Stat. 742, 30 U.S.C. 801 et seq. Accordingly, as shown below, this action effects the necessary revision of part 301, and amendment to the heading of Chapter III, Title 30 of the Code of Federal Regulations, to cross reference to regulations applicable to surface coal mining hearings and appeals within the jurisdiction of administrative law judges and the Interior Board of Surface Mining and Reclamation Appeals. Additionally, the cross reference in part 302, pertaining to regulations formerly applicable to hearings, appeals and other review proceedings before the Interior Board of Mine Operations Appeals, now obsolete, is revoked.

The author of this document is Ms. Frances A. Patton, Office of Hearings and Appeals.

Because these amendments involve technical changes only, no purpose would be served in obtaining public comment pursuant to 5 U.S.C. 553. The amendments are, therefore, made effective as of the date of their publication in the FEDERAL REGISTER.

1. The heading to Chapter III, Title 30 of the Code of Federal Regulations,

is amended, and Part 301 of that chapter is revised, to read:

§ 301.1 Cross reference.

For special rules applicable to hearings, appeals, and other review procedures relating to surface mining control and reclamation within the jurisdiction of administrative law judges and the Interior Board of Surface Mining and Reclamation Appeals, Office of Hearings and Appeals, see subpart L of part 4 of subtitle A—Office of the Secretary of the Interior, of title 43 of the Code of Federal Regulations. Subpart A of part 4 and all of the general rules in subpart B of part 4 not inconsistent with the special rules in subpart L of part 4 are also applicable to such hearings, appeals and other review proceedings.

(Sec. 201, Pub. L. 95-87, 91 Stat. 445, 30 U.S.C. 1201 et seq.)

Part 302 [Removed]

2. Part 302 of chapter III, Title 30 of the Code of Federal Regulations, is revoked.

Dated: September 8, 1978.

JAMES A. JOSEPH,
Acting Secretary of the Interior.

[FR Doc. 78-26354 Filed 9-18-78; 8:45 am]

[3710-08]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

[EP 405-1-2; formerly ER 405-1-663]

PART 641—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The present regulation, which provides procedural guidance to Corps of Engineers field personnel on the implementation of Pub. L. 91-646 and information to the public concerning the Army's relocation program, is being amended to clarify procedures, update application procedures, and clarify the intent of corps regulations. The amendments will benefit the public by simplifying the application procedure and making the regulations easier to read and understand.

EFFECTIVE DATE: August 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Garland P. Thompson, 202-693-6786 or write to: Chief, Policy and Operations Branch, Homeowners Assistance Division, Real Estate Directorate, Office of the Chief of Engineers, Washington, D.C. 20314.

In consideration of the above, 32 CFR Part 641 is amended by revising §§ 641.4(a), 641.63(c), 641.104(c)(5), and 641.252(a) as set forth below:

§ 641.4 Basic policy and procedural requirements.

* * * * *

(a) A written notice of intention to acquire must be given to each individual family, business or farm operation to be displaced. Such notice shall by served personally or be certified (or registered) first-class mail at the earliest possible time. (See figure 6-1)

* * * * *

§ 641.63 Nonallowable moving expenses and losses.

* * * * *

(c) Improvements to the replacement site, except when required by law in connection with the movement and reinstallation of personal property referred to in § 641.62(a)(6).

* * * * *

§ 641.104 Differential payment for replacement housing.

* * * * *

(c) * * *

(5) Even though the dwelling being acquired may be located on a tract larger than the average residential lot in the area or on a tract whose value is based on a higher and better use than residential, section 203 of the Act requires that the replacement housing payment be based on the "acquisition cost" of the dwelling. This means that a portion of the purchase price paid for the entire property must be attributed to the dwelling and homesite. In such cases, the appraiser will be requested to insert a statement in the appraisal report reading substantially as follows:

"The total appraised value of this property is $X, of which $Y constitutes the appraised value of the dwelling and homesite." The sum of $Y will be considered the "acquisition cost" of the dwelling for the purpose of calculating section 203 benefits. However, if the eventual purchase price of the entire property should exceed the Government's appraised value, a proportionate share of any increase over the entire property's appraised value will be applied to the dwelling unless there is evidence justifying a different acquisition cost for the dwelling in relation to the value of the tract.

* * * * *

§ 641.252 Application.

(a) The application to be used in processing claims for relocation assistance is comprised of various forms developed by the General Services Administration and approved by the Office of Management and Budget, standard forms 262 through 267 (figure 6-4). Although these forms are self-explanatory, the District Engineer will render such assistance to the applicant as may be necessary for their completion. The application, when submitted to the District Engineer, must be accompanied by supporting invoices, receipts or other items to substantiate payment for each item in the amount claimed.

* * * * *

Since these regulations only provide procedural guidance to Corps of Engineers field personnel on the implementation of Pub. L. 91-646, notice of proposed rulemaking and the procedures thereto are considered unnecessary.

NOTE.—The Chief of Engineers has determined that this rule does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107. (Pub. L. 90-483.)

Dated: September 8, 1978.

For the Chief of Engineers:

THORWALD R. PETERSON,
Colonel, Corps of Engineers,
Executive Director, Engineer Staff.

[FR Doc. 78-26281 Filed 9-18-78; 8:45 am]

[1410-03]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 78-2]

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

Deposit Requirements

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting amendments to §§ 202.19, 202.20, and 202.21 of our regulations. The effect of the amendments is: (i) To liberalize the deposit requirements for certain types of three-dimensional works; (ii) to provide expressly for the means of termination of continuing arrangements under which the Copyright Office has granted a request for special relief as an exception to the general deposit requirements; (iii) to permit the deposit of only one copy of musical compositions in certain cases; (iv) to permit the deposit of photographs or similar identifying reproductions in the case of unpublished pictorial and graphic works; (v) to clarify the deposit requirements for machine-readable works; (vi) to clarify the meaning of a "complete copy" in the case of motion pictures; (vii) to liberalize the deposit requirements for works reproduced in or on sheetlike materials; (viii) to liberalize the requirements governing the size and mounting of photographic transparencies deposited as identifying material, and to revise certain requirements concerning separate drawings of the copyright notice appearing in identifying material; (ix) to clarify the definition of a "complete" copy or phonorecord; (x) to clarify the deposit requirements for registration of works published in separable parts; and (xi) to add clarifying provisions concerning the deposit of works appearing on containers, wrappers, holders, and similar receptacles.

DATES: The regulations, as amended, are effective on September 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Jon Baumgarten, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, 703-557-8731.

SUPPLEMENTARY INFORMATION: Under 17 U.S.C. 407 the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States is required to deposit copies of the work in the Copyright Office for the use or disposition of the Library of Congress. Section 408 of the statute also requires deposit of material in connection with applications for copyright registration of unpublished and published works. After establishing general rules governing the nature of the required deposit, section 408 authorizes the Register of Copyrights to prescribe regulations governing "the nature of the copies or phonorecords to be deposited" and to "require or permit * * * the deposit of identifying material instead of copies or phonorecords * * *."

On January 4, 1978, we published in the FEDERAL REGISTER (43 FR 763) final regulations implementing the deposit requirements of sections 407 and 408. Those regulations, among other things, generally required the deposit of "identifying material," such as photographs or drawings, instead of actual copies of three-dimensional works. This requirement was designed to improve our records of copyright registrations and to reduce the substantial administrative costs and burdens faced by the Copyright Office in handling and storing material of a wide variety of shapes and sizes.

After reconsideration in the light of our experience under those regulations, on March 21, 1978 (43 FR 11701) we made several interim changes in their application to three-dimensional works.[1] Those changes:

(1) Amended §§ 202.20(b)(2) and 202.20(c)(2)(ix) to remove the requirement that an applicant submit photographs or similar reproductions of uncopyrightable three-dimensional articles (for example, yarn and knitting needles) as a condition to registration of two-dimensional works (for example, instructions or illustrations) with which they are packaged;

(2) Amended § 202.20(d)(1) to permit the deposit of actual copies of three-dimensional works, instead of photographs or the like, as "special relief" in particular cases;

(3) Amended § 202.20(c)(2)(ix) to make clear that, unless special relief is asked for and granted, the general requirement that identifying material be submitted in lieu of actual copies of three-dimensional works does apply to boxed or similarly contained works; and

(4) Amended § 202.21 in several respects: To liberalize the requirements governing the minimum size of identifying material, thereby permitting the deposit of inexpensive photographs of works; to make clear that the entire section, as amended, pertains to the deposit of identifying material of both published and unpublished works; and to make clear that, where drawings of a copyright notice must be submitted as part of identifying material, the drawing need not be of the same size as the material reproducing the work itself.

Interested parties were given until April 28, 1978, to comment on the interim amendments. No comments were received on the specific changes noted above, and they are adopted as final.

Our ongoing experience with deposits of three-dimensional works has prompted us to make another liberalizing amendment. Under the regulations as issued, applicants for registration of works consisting of multiple three-dimensional parts were required to deposit identifying material showing each copyrightable part, instead of actual copies of the work. This meant that, for example, in the case of a board game, the applicant would have to prepare and submit a number of photographs or drawings showing each separate copyrightable piece composing the game, including all copyright notices on the various parts.

We believe that, in cases where the work consists of multiple parts that are contained in a box or similar container of reasonable size, the substantial burden on the applicant in preparing multiple photographs or other identifying reproductions probably outweighs the problems caused the Copyright Office in processing and storing the deposit. We are therefore amending § 202.20(c)(2)(ix) to exempt from the requirement for the submission of identifying material, works consisting of multiple parts that include among the copyrightable elements of the work, in addition to any copyrightable elements on the box or other container, three or more three-dimensional, physically separable parts, and that are packaged and published in a box or similar container with flat sides and with dimensions of no more that 12 x 24 x 6 inches. The most typical examples of this type of material are board games, but other examples include model kits, and certain kinds of craft kits. We have also added a new paragraph (H) to § 202.20(c)(2)(i) to permit the deposit of only one copy in these cases.

The Copyright Office is continuing an active study of all of its processing and recordkeeping activities, and a major focus of the study involves the costs (both direct and hidden) of creating, maintaining, preserving, and accessing deposit records. The handling and storage of bulky material, even if boxed, involves very substantial costs, and we must therefore consider these amendments as experimental for the time being. We will be monitoring their effect on our costs and operations and, depending upon our findings, we may have to consider returning to the requirement for identifying material. In any event, the Office distinctly prefers the deposit of identifying material in these cases, even where the deposit of a boxed copy is permitted.

This change in our regulations has considerable practical importance but, since it is primarily a liberalization of a procedural requirement imposed on the public by the Copyright Office, we are issuing it as final with this notice. The same is true of several other amendments which, on the basis of our experience with the deposit regulations over the past several months, are needed to liberalize or clarify the requirements. Specifically:

(1) *Special relief.* In developing the deposit regulations it became apparent that it would not be possible to establish categorical rules, exemptions, or alternatives to cover all cases where the general deposit provisions might cause unnecessary hardship. Accordingly, §§ 202.19(e) and 202.20(d) permit requests to be made for "special relief" in particular cases. Our original intent was to consider requests for special relief on a case-by-case basis. In some cases, however, there have been requests for ongoing or continuous relief applicable to a specific copyright owner, aimed at particular categories of works or particular circumstances encountered by that owner. In order for the Copyright Office to grant special relief on an ongoing basis where warranted in these cases, while at the same time reserving the right to insist upon the general deposit requirements if circumstances later change, we are adding a termination provision to both sections. Although the right of termination was implicit in the reference to grants of relief upon "such conditions as the Register (of Copyrights) may determine" in the original regulations, we believe we should prevent confusion and unnecessary paperwork by stating this principle expressly. To avoid any possible question, the amendment provides that a termination of special relief will not affect the validity of any earlier deposit.

(2) *Musical compositions published by rental, lease, or lending.* Sections 202.19(d)(2)(v) and 202.20(c)(2)(i)(F) of

[1] In a separate proceeding (docket RM 78-3) we also amended the deposit regulations to reflect the availability of the Library of Congress "Motion Picture Agreement." That agreement (i) provides for the return of published motion pictures to depositors under certain conditions; and (ii) establishes certain rights and obligations of the Library of Congress with respect to such works. See 43 FR 12320 (Mar. 24, 1978; interim regulations) and 43 FR 31132 (July 20, 1978; final regulations).

the regulations permit the deposit of one copy in the case of musical compositions published "only by rental, lease, or lending (rather than sale) of copies." Sections 202.19(b)(2) and 202.20(b)(2) define a "complete" copy in these cases as a full score or a conductor's score. These provisions were made in response to public comments pointing out that in musical rental cases only a limited number of copies exist for distribution, and that application of the normal requirement for two copies of the full score and parts would be unjustifiably burdensome and expensive.

The wording of the regulation as issued presented a technical problem. In cases where a musical work had been published both in the form of a rental score and in the form of phonorecords, the regulations, in combination with the Library of Congress "Best Edition" criteria, seemed to require the deposit of two copies of the score. This was not intended, and we are revising the regulations to make clear that only one copy is required in these cases.

(3) *Unpublished pictorial and graphic works.* Section 202.20(c)(2)(iv) of the regulations permits the deposit of identifying reproductions, instead of actual copies, of both published and unpublished pictorial and graphic works only where an "individual author" is the copyright owner. This provision, which parallels a provision in section 407(c) of the statute, was intended primarily to give individual artists the option of depositing photographs of their published prints under certain circumstances, but to withhold this option from a copyright owner (employer-for-hire or transferee) who is not the author of the published work, thus requiring deposit of copies of the actual print for the collections of the Library of Congress in these cases. The same considerations do not apply to unpublished works however, and we are therefore amending the section to allow the deposit of photographs or like reproductions of all unpublished pictorial or graphic works, including those in which copyright is owned by an employer-for-hire or transferee of the author.

(4) *Machine-readable works.* Section 202.20(c)(2)(vii) of the regulations specifies the deposit requirements for registration of machine-readable computer programs, automated data bases, and the like. In these cases, visually perceptible deposits are necessary for examining purposes, but the entire work need not be deposited in visual form; the regulations require only specified portions of the work to be deposited. However, as issued, the regulations on this point were limited to machine-readable works published in the United States, thus leaving unclear the deposit requirements for registration of machine-readable works published abroad. We are therefore revising the section to remove the reference to publication in the United States.[2]

(5) *Motion pictures.* We are also amending §§ 202.19(b)(2) and 202.20(b)(2) to clarify the meaning of a "complete copy" in the case of motion pictures. To be considered complete, and therefore acceptable for registration, a copy of a motion picture must be clean, undamaged, undeteriorated, and free of splices; both the copy itself and its physical housing must be free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions. (Deposit copies of motion pictures that are returned under the Library's Motion Picture Agreement are subject to the requirements of that agreement.)

(6) *Works reproduced in or on sheetlike materials.* Section 202.20(c)(2)(viii) requires that the deposit for a work reproduced in or on sheetlike materials which consists of a repeated pictorial or graphic design show the complete design and at least one repetition. However, on the basis of experience, we feel that the nature of a work reproduced in this fashion is sufficiently revealed by a deposit which shows the complete design and at least part of one repetition. We are liberalizing this section of the regulations accordingly.

(7) *Deposit of identifying material instead of copies.* Section 202.21(c) requires that transparencies, when submitted as identifying material in lieu of copies, must be 35 mm in size and fixed in cardboard, plastic, or similar mounts. Our experience has shown that it is too restrictive to require all transparencies to be 35 mm. The regulation has been amended to require photographic transparencies to be "at least" 35 mm, thus giving depositors the option of depositing larger transparencies if they prefer.

To facilitate handling and storage, we prefer all transparencies to be fixed in cardboard, plastic, or similar mounts. We recognize, however, that it could be unjustifiably burdensome to require the mounting of large transparencies in all cases. We have therefore amended the regulation to retain the requirement of mounting for transparencies that are 3" x 3" inches or smaller, but not to make mounting an absolute requirement for larger transparencies. However, the amended regulation reserves to the Office the right to require mounting in particular cases for transparencies larger than 3" x 3".

We have also sought to clarify the requirements governing the separate drawing or similar reproduction of the copyright notice, which must accompany identifying material in certain cases. Under amendments of paragraphs (c) and (e) of § 202.21, the separate drawing need not be uniform in size with the other pieces of identifying material, but it must be no smaller than 3" x 3" and no larger than 9" x 12". We have dropped the provision requiring that the dimensions of the notice be shown on the drawing, since this additional requirement seems, in practice, to be more trouble than it is worth.

(8) *Definition of "complete" copy or phonorecord.* The deposit regulations necessarily contain two definitions of "complete" copy or phonorecord: One in § 202.19(b)(2) for purposes of satisfying the mandatory deposit requirements of section 407 of the statute, and another in § 202.20(b)(2) for purposes of satisfying the registration requirements of section 408. Although these two definitions interrelate, there are significant differences between them.

The amendments we are making in the definition of "complete" copy or phonorecord in § 202.20(b)(2) add substantially to the length of that paragraph. For the sake of clarity and consistency, we have recast the paragraph somewhat, and have organized it under six subheadings: unpublished works; published works; contributions to collective works; sound recordings; musical scores; and motion pictures.

(9) *Works published in separable parts.* As part of the revision of the definition of "complete" copy or phonorecord in § 202.20(b)(2), we have dealt with the general question of works published in separable parts, where only certain elements are deposited for registration. In the case of published works other than sound recordings, the amendment makes clear that, if the work is subject to the mandatory deposit requirements of section 407, registration under section 408 requires deposit of one or two "complete" copies, including "all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements * * *." However, if the work is not subject to the mandatory deposit requirements, the amendment generally con-

[2] In § 202.19(c)(5), which provides a complete exemption from the mandatory deposit requirements, we have retained the reference to "published in the United States." The mandatory deposit requirements of sec. 407 of the statute apply only to works published in the United States. Sec. 202.19(c)(5) of the regulations is intended to grant an exemption in the situation where a work has been published abroad in hard-copy form, but has been published in the United States only in machine-readable form.

siders a copy or phonorecord "complete" even if some elements of the unit of publication are missing, under two conditions: (1) The deposit must contain everything for which the applicant is seeking registration; and (2) the separation of the missing elements must not leave the deposit physically marred or garbled.

(10) *Containers and other receptacles.* A special problem arises with respect to containers, wrappers, holders, and other receptacles, where the only material for which copyright registration is sought appears on the receptacle. Many of these works are exempt from the mandatory deposit requirements and therefore, under the amendment of § 202.20(b)(2), could be considered "complete" for purposes of registration without their contents. For example, an envelope containing hairnets should be deposited without the hairnets, and a slipcase containing stationery could be deposited without the stationery.

However, there are a number of cases—book jackets and record sleeves are common examples among many—where there is no exemption from the mandatory deposit requirements, but it would be burdensome or unfair to require the author or other owner of copyright in the material appearing on the jacket or other receptacle to deposit the complete unit of publication. To solve this problem we have added a special exception covering containers, wrappers, holders, and other receptacles.

A related problem arises wih respect to three-dimensional containers and holders such as boxes, cases, and cartons. Where the material for which registration is sought is printed on a label attached to the container, the label can be removed and deposited for registration separately. However, where the copyrighted work is printed or otherwise reproduced directly on the container, the applicant will generally be required to deposit identifying material rather than a three-dimensional copy.

Our experience with the deposit regulations suggests that an exception should be made where the empty container on which the copyrighted work appears can be readily opened, folded, slit at the corners, or in some other way made adaptable for flat storage. We have therefore amended § 202.20(c)(2)(ix) to permit the applicant to deposit an actual copy rather than identifying material in cases of this sort.

Two comments were received in response to our March 21 notice on matters other than those dealt with in the specific interim amendments contained in that notice. One of these comments urged that we amend the regulations to state that we accept choreographic works and pantomimes for registration on the basis of a deposit copy notated in Sutton Movement Shorthand. Under the new Copyright Act it is clear that choreography and mime are proper subject matter of copyright if they are "fixed" in some tangible medium, 17 U.S.C. 102. This medium may consist of a copy in any form of "written" notation, including (but not limited to) Sutton Movement Shorthand, Labanotation, Benesh notation, and other forms of notation, pictorial or narrative description of movements; or it may take the form of film, videotape, videodisk, hologram, or any other method of recording dance or mime cinematographically. The coined word "choreology" covers, among other things, the writing down of dances by various means, and the fixation envisioned by the law would include any form of written record of a choreographic work made by a "choreologist."

So far in our experience with registering choreographic works and pantomimes under the new law, we have not felt it necessary to lay out specific deposit requirements for these works in our regulations. For unpublished choreographic works and pantomimes the general requirement is for deposit of "one complete copy"—that is, a copy "representing the entire copyrightable content of the work for which registration is sought." For published works in these classes, the Library of Congress "Best Edition" criteria [3] are applicable, and within these criteria the depositor may deposit whatever form or copy it believes best to represent the work.

Although we are not now amending our deposit regulations to add a provision dealing with choreographic works and pantomimes, we plan to review this question on the basis of experience in the future, and to consider any questions and problems that have arisen. For this reason we would welcome any suggestions or comments from depositors of choreographic works and pantomimes deriving from their experience under the new copyright law.

A second comment in response to our March 21 notice requested that we exempt "multiple weekly television series by other than the major producers or networks" from the deposit requirements of section 407 of the Act. This comment also suggests that "a single half hour program during any year should (be considered to) cover the deposit requirement for the entire year," apparently for the purposes of both sections 407 and 408.

We recognize that further regulatory provisions are needed to implement section 407(b) of the statute (dealing with unpublished transmission programs) and section 113 of the statute's transitional and supplementary provisions (establishing the American Television and Radio Archives in the Library of Congress). A number of policy decisions, some of which depend upon available funding, remain to be made. Meanwhile, the determining factor in considering exemptions from the statutory deposit requirements are the general acquisition policies of the Library of Congress.

Where television serial installments are distributed in such manner that they fall within the statutory definition of "publication," the Library of Congress does want to add them to its collections and thereby build an archival record of our country's television heritage. The burden upon the copyright owner is lessened by our reduction of the normal two-copy deposit requirement to one copy and, even more so, by the availability of the Motion Picture Agreement (see footnote 1, above). Moreover, in some cases these works are not "published" under the Act. In these cases, the mandatory deposit provisions of section 407 are not applicable and, in seeking registration under section 408, the copyright owner may deposit "identifying material" (a description of the motion picture with either an audio cassette or other phonorecord, or a set of frame enlargements or similar reproductions) in lieu of an actual copy of the work under § 202.21(g) of our regulations.

The deposit regulations are amended as stated, and are set forth in full below.

BARBARA RINGER,
Register of Copyrights.

Approved:

WILLIAM J. WELSH,
Acting Librarian of Congress.

[3] The Library's "Best Edition" criteria for published works are set out at 43 FR 766. Within these criteria: (i) If a choreographic work or pantomime is published in the form of both "written notation" and film (or videotape or disk), the written notation must be deposited (Best Edition Statement, par. VIIIB); (ii) if such a work is published only in the form of a written notation, or in the form of different written notations, there is no preference among the Laban, Sutton, Benesh, or other forms and the depositor may choose that form it has available or believes best to represent the work; and (iii) if such a work is published only in the form of film, videotape, or videodisk copies, certain preferences between film and tape, and among film gages and tape formats, are established (Best Edition Statement, par. III). The "Best Edition" criteria deal only with works that are fixed and published in varying formats or editions. Nothing in these criteria requires the creator of a choreographic work or pantomime to choose any particular form in which to fix or publish a work.

Part 202 of 37 CFR Chapter II is amended by revising §§ 202.19, 202.20, and 202.21 to read as follows:

§ 202.19 Deposit of published copies of phonorecords for the Library of Congress.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress under section 407 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of title 17, except as expressly adopted in § 202.20 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) (i) The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

(ii) Criteria for selection of the "best edition" from among two or more published editions of the same version of the same work are set forth in the statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" (hereafter referred to as the "Best Edition Statement") in effect at the time of deposit. Copies of the Best Edition Statement are available upon request made to the Acquisitions and Processing Division of the Copyright Office.

(iii) Where no specific criteria for the selection of the "best edition" are established in the Best Edition Statement, that edition which, in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the "best edition". In such cases: (A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the "best edition" and (except in cases for which special relief is granted) will require deposit of that edition; and (B) when a potential depositor is uncertain which of two or more published editions comprises the "best edition", inquiry should be made to the Acquisitions and Processing Division of the Copyright Office.

(iv) Where differences between two or more "editions" of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work, for the purpose of this section, and criteria of "best edition" based on such differences do not apply.

(2) A "complete" copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a "complete" phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container). In the case of a musical composition published in copies only, or in both copies and phonorecords; (i) if the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a "complete" copy; and (ii) if the only publication of copies in the United States took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a "complete" copy. In the case of a motion picture, a copy is "complete" if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms "copies", "collective work", "device", "fixed", "literary work", "machine", "motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of title 17.

(4) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94-553.

(3) *Exemptions from deposit requirements.* The following categories of material are exempt from the deposit requirements of section 407(a) of title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addressses when published individually and not as a collection of the works of one or more authors.

(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the applicable deposit requirements for the sound recording.

(5) Literary works, including computer programs and automated data bases, published in the United States only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microform), and works published in visually perceivable form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textile and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services.

(8) Tests, and answer material for tests, when published separately from other literary work.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole, from the applicable deposit requirements for the collective work.

(10) Works first published outside the United States and later published in the United States without change in copyrightable content, if: (i) Registration for the work was made under 17 U.S.C. 403 before the work was published in the United States: or (ii) registration for the work was made under 17 U.S.C. 406 after the work was published in the United States but before a demand for deposit is made under 17 U.S.C. 407(d).

(11) Works published only as embodied in a soundtrack that is an integral part of a motion picture. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the motion picture,

from the applicable deposit requirements for the motion picture.

(12) Motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(d) *Nature of required deposit.* (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of title 17 shall consist of (i) in the case of published works other than sound recordings, two complete copies of the best edition; and (ii) in the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representations of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion pictures, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit for a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library with respect to such copies. In the event of termination of such an agreement by the Library it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by: (A) Two sets of precise instructions for displaying the image fixed in the hologram; and (B) two sets of identifying material in compliance with § 202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than three hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21 of these regulations, will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(v) In the case of a musical composition published in copies only, or in both copies and phonorecords, if the only publication of copies in the United States took place by rental, lease, or lending, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vi) In the case of published multimedia kits that are prepared for use in systematic instructional activities and that include literary works, audiovisual works, sound recordings, or any combination of such works, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(e) *Special relief.* (1) In the case of any published work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Grant an exemption from the deposit requirements of section 407(a) of title 17 on an individual basis for single works or series or groups of works; or (ii) permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d)(1) of this section; or (iii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Chief, Acquisitions and Processing Division of the Copyright Office, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit earlier made under the grant of special relief.

(f) *Submission and receipt of copies and phonorecords.* (1) All copies and phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance with section 407 of title 17 unless they are accompanied by: (i) An application for registration of claim to copyright, or (ii) a clear written request that they be held for connection with a separately forwarded application. Copies or phonorecords deposited without such an accompanying application or written request will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of title 17 or § 202.20 of these regulations. Any written request that copies or phonorecords be held for connection with a separately forwarded application must appear in a letter or similar document accompanying the deposit; a request or instruction appearing on the packaging, wrapping or container for the deposit will not be effective for this purpose.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a certificate of receipt for the deposit of copies or phonorecords of a work under this section. Certificates of receipt will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a certificate of receipt must be in writing and accompanied by a fee of $2. A certificate of receipt will include identification of the depositor, the work deposited, and the nature

and format of the copy or phonorecord deposited, together with the date of receipt.

§ 202.20 Deposit of copies and phonorecords for copyright registration.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) The "best edition" of a work; has the meaning set forth in § 202.19(b)(1) of these regulations.

(2) A "complete" copy or phonorecord means the following:

(i) *Unpublished works.* Subject to the requirements of paragraph (vi) of this § 202.20(b)(2), a "complete" copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought;

(ii) *Published works.* Subject to the requirements of paragraphs (iii) through (vi) of this § 202.20(b)(2), a "complete" copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be copyrightable subject matter. However, even where certain physically separable elements included in the applicable unit of publication are missing from the deposit, a copy or phonorecord will be considered "complete" for purposes of registration where: (A) The copy or phonorecord deposited contains all parts of the work for which copyright registration is sought; and (B) the removal of the missing elements did not physically damage the copy or phonorecord or garble its contents; and (C) the work is exempt from the mandatory deposit requirements under section 407 of title 17 of the United States Code and § 202.19(c) of these regulations, or the copy deposited consists entirely of a container, wrapper, or holder, such as an envelope, sleeve, jacket, slipcase, box, bag, folder, binder, or other receptacle acceptable for deposit under paragraph (c)(2) of this section;

(iii) *Contributions to collective works.* In the case of a published contribution to a collective work, a "complete" copy or phonorecord is the entire collective work including the contribution or, in the case of a newspaper, the entire section including the contribution;

(iv) *Sound recordings.* In the case of published sound recordings, a "complete" phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations;

(v) *Musical scores.* In the case of a musical composition published in copies only, or in both copies and phonorecords: (i) If the only publication of copies took place by the rental, lease, or lending of a full score and parts, a full score is a "complete" copy; and (ii) if the only publication of copies took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a "complete" copy;

(vi) *Motion pictures.* In the case of a published or unpublished motion picture, a copy is "complete" if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms "copy," "collective work," "device," "fixed," "literary work," "machine," "motion picture," "phonorecord," "publication," "sound recording," "transmission program," and "useful article," and their variant forms, have the meanings given to them insection 101 of title 17.

(4) A "secure test" is a nonmarketed test administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.

(5) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94-553.

(6) For the purposes of determining the applicable deposit requirements under this § 202.20 only, the following shall be considered as unpublished motion pictures: motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(c) *Nature of required deposit.* (1) Subject to the provisions of paragraph (c)(2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, whenever published, one complete copy or phonorecord of the work as first published. For the purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c)(1) of this section.

(i) *General.* In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords: (A) Published three-dimensional cartographic representations of area, such as globes and relief models; (B) published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing; (C) published greeting cards, picture postcards, and stationery; (D) lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or more authors; (E) published contributions to a collective work; (F) musical compositions published in copies only, or in both copies and phonorecords, if the only publication of copies took place by rental, lease, or lending; (G) published multimedia kits that are prepared for use in systematic instructional activities and that include literary works, audiovisual works, sound recordings, or any combination of such works; and (H) works exempted from the requirement of depositing identifying material under § 202.20(c)(2)(ix)(B)(5) of these regulations.

(ii) *Motion pictures.* In the case of published motion pictures, the deposit of one complete copy will suffice in lieu of two copies. The deposit of a copy or copies for any published or unpublished motion picture must be ac-

companied by a separate description of its contents, such as a continuity, pressbook, or synopsis. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library of Congress with respect to such copies. In the event of termination of such an agreement by the Library, it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement. In the case of unpublished motion pictures (including television transmission programs that have been fixed and transmitted to the public, but have not been published), the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of an actual copy.

(iii) *Holograms.* In the case of any work deposited in the form of a hologram, the copy or copies shall be accompanied by: (A) Precise instructions for displaying the image fixed in the hologram; and (B) photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image. The number of sets of instructions and identifying material shall be the same as the number of copies required.

(iv) *Certain pictorial and graphic works.* In the case of any unpublished pictorial or graphic work, deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of deposit of an actual copy. In the case of a published pictorial or graphic work, deposit of one complete copy, or of identifying material in compliance with § 202.21 of these regulations, may be made and will suffice in lieu of deposit of two actual copies where an individual author is the owner of copyright, and either: (A) Less than five copies of the work have been published; or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

(v) *Commercial prints and labels.* In the case of prints, labels, and other advertising matter published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies except under the conditions of paragraph (c)(2)(ix)(B)(*6*) of this section.

(vi) *Tests.* In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: *Provided,* That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) *Machine-readable works.* In cases where an unpublished literary work is fixed, or a published literary work is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device,[4] the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last 25 pages or equivalent units of the program if reproduced on paper, or at least the first and last 25 pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any,

(B) For published and unpublished automated data bases, compilations, statistical compendia, and other literary works so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes: (*1*) "identifying portions" shall mean either the first and last 25 pages or equivalent units of the work if reproduced on paper, or at least the first and last 25 pages or equivalent units of work if reproduced on microform, or, in the case of automated data bases comprising separate and distinct data files, representative portions of each separate data file consisting of either 50 complete data records from each file or the entire file, whichever is less; and (*2*) "data file" and "file" mean a group of data records pertaining to a common subject matter, regardless of the physical size of the records or the number of data items included in them. (In the case of revised versions of such data bases, the portions deposited must contain representative data records which have been added or modified.) In any case where the deposit comprises representative portions of each separate file of an automated data base as indicated above, it shall be accompanied by a typed or printed descriptive statement containing: The title of the data base; the name and address of the copyright claimant; the name and content of each separate file within the data base, including the subject matter involved, the origin(s) of the data, and the approximate number of individual records within the file; and a description of the exact contents of any machine-readable copyright notice employed in or with the work and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.). If a visually perceptible copyright notice is placed on any copies of the work (such as magnetic tape reels) or their container, a sample of such notice must also accompany the statement.

(viii) *Works reproduced in or on sheetlike materials.* In the case of any unpublished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduction on sheetlike materials such as textile and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material, the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least part of one repetition must be shown. If the sheetlike material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as wearing apparel, furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy.

(ix) *Works reproduced in or on three-dimensional objects.* (A) In the follow-

[4] Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

ing cases the deposit must consist of identifying material complying with § 201.21 of these regulations instead of a copy or copies: (*1*) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form. Examples of such works include statues, carvings, ceramics, moldings, constructions, models, and maquettes; and (*2*) any two-dimensional or three-dimensional work that, if unpublished, has been fixed, or, if published, has been published only in or on jewelry, dolls, toys, games, or any three-dimensional useful article.

(B) In the following cases. the requirements of paragraph (A) of this § 202.20(c)(2)(ix) for the deposit of identifying material shall not apply: (*1*) Works that are reproduced by intaglio or relief printing methods on two-dimensional materials such as paper or fabrics; (*2*) three-dimensional cartographic representations of area, such as globes and relief models; (*3*) works that have been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works; (*4*) published works exempt from the deposit of copies under section 407 of title 17 and § 202.19(c) of these regulations, where the "complete" copy of the work within the meaning of paragraph (b)(2) of this section consists of a reproduction of the work on two-dimensional materials such as paper or fabrics; (*5*) published works consisting of multiple parts that are packaged and published in a box or similar container with flat sides and with dimensions of no more than 12 x 24 x 6 inches, and that include among the copyrightable elements of the work, in addition to any copyrightable element on the box or other container, three or more three-dimensional, physically separable parts; and (6) works reproduced on three-dimensional containers or holders such as boxes, cases, and cartons, where the container or holder can be readily opened out, unfolded, slit at the corners, or in some other way made adaptable for flat storage, and the copy, when flattened, does not exceed 96 inches in any dimension.

(x) *Soundtracks.* For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, the deposit of identifying material in compliance with § 202.21 of these regulations will suffice in lieu of an actual copy or copies of the motion picture.

(ix) *Oversize deposits.* In any case where the deposit otherwise required by this section exceeds ninety-six inches in any dimension, identifying material complying with § 202.21 of these regulations must be submitted instead of an actual copy or copies.

(d) *Special relief.* (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c)(1) of this section; (ii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or (iii) permit the deposit of an actual copy or copies, in lieu of the identifying material otherwise required by this section.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under § 202.19(e) of these regulations. Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Chief, Examining Division of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit or registration earlier made under the grant of special relief.

(e) *Use of copies and phonorecords deposited for the Library of Congress.* Copies and phonorecords deposited for the Library of Congress under section 407 of title 17 and § 202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, or connected with such an application under the conditions set forth in § 202.19(f)(1) of these regulations.

§ 202.21 Deposit of identifying material instead of copies.

(a) *General.* Subject to the specific provisions of paragraphs (f) and (g) of this section, in any case where the deposit of identifying material is permitted or required under § 202.19 or § 202.20 of these regulations for published or unpublished works, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works, such material shall reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) *Completeness; number of sets.* As many pieces of identifying material as are necessary to show clearly the entire copyrightable content of the work for which deposit is being made, or for which registration is being sought, shall be submitted. Except in cases falling under the provisions of § 202.19(d)(2)(iii) or § 202.20(c)(2)(iii) with respect to holograms, only one set of such complete identifying material is required.

(c) *Size.* All pieces of identifying material (except separate drawings or similar reproductions of copyright notices deposited under the second sentence of paragraph (e) of this section) must be of uniform size. Photographic transparencies must be at least 35 mm in size and, if such transparencies are 3 x 3 inches or less, must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. The Copyright Office prefers that transparencies larger than 3 x 3 inches be mounted in a way that facilitates their handling and preservation, and reserves the right to require such mounting in particular cases. All types of identifying material other than photographic transparencies must be not less than 3 x 3 inches and not more than 9 x 12 inches, but preferably 8 x 10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be large enough to show clearly the entire copyrightable content of the work.

(d) *Title and dimensions.* At least one piece of identifying material must,

on its front, back, or mount, indicate the title of the work and an exact measurement of one or more dimensions of the work.

(e) *Copyright notice.* In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted. Such reproduction shall be no smaller than 3 x 3 inches and no larger than 9 x 12 inches, and shall show the exact appearance and content of the notice, and its specific position on the work.

(f) For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, identifying material deposited in lieu of an actual copy or copies of the motion picture shall consist of: (1) A transcription of the entire work, or a reproduction of the entire work on a phonorecord; and (2) photographs or other reproductions from the motion picture showing the title of the motion picture, the soundtrack credits, and the copyright notice for the soundtrack, if any. The provisions of paragraphs (b), (c), (d), and (e) of this § 202.21 do not apply to identifying material deposited under this paragraph (f).

(g) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either: (1) An audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture, and a description of the motion picture; or (2) a set consisting of one frame enlargement or similar visual reproduction from each 10-minute segment of the motion picture, and a description of the motion picture. In either case the "description" may be a continuity, a pressbook, or a synopsis but in all cases it must include: (i) The title or continuing title of the work, and the episode title, if any: (ii) the nature and general content of the program; (iii) the date when the work was first first and whether or not fixation was simultaneous with first transmission; (iv) the date of first transmission, if any; (v) the running time; and (vi) the credits appearing on the work, if any. The provisions of paragraphs (b), (c), (d), and (e) of this § 202.21 do not apply to identifying material submitted under this paragraph (g).

(17 U.S.C. 407, 408, 702.)

[FR Doc. 78-26108 Filed 9-18-78; 8:45 am]

[7710-12]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

PART 221—GENERAL PRINCIPLES OF ORGANIZATION

PART 224—GROUPS AND DEPARTMENTS

Establishment of Research and Technology Group

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document reflects the establishment of the Research and Technology Group, which is headed by a Senior Assistant Postmaster General who is a member of the Executive Committee. This group is composed of the International Electronics Message System Office, the Research and Development Laboratories (previously called the Research and Development Department), and the Office of Strategic Planning. Of these component offices, only the first-named office, the International Electronics Message System Office, is a new office. The other two offices were previously part of the administration group.

EFFECTIVE DATE: September 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Paul J. Kemp, 202-245-4638.

Accordingly, 39 CFR is amended as follows:

1. In § 221.5 redesignate paragraph (d)(1)(vii), (viii), (ix) and (x) as (d)(1)(viii), (ix), (x) and (xi) respectively, and add new paragraph (d)(1)(vii) and revise the first sentence of paragraph (a) to read as follows:

§ 221.5 Groups and departments.

(a) Postal Service Headquarters is primarily divided into five groups—Administration, Employee and Labor Relations, Finance, Operations, and Research and Technology. * * *

* * * * *

(d)(1) * * *

(vii) The Senior Assistant Postmaster General, Research and Technology;

* * * * *

2. In § 224.1 strike out the word "four" in the first and second sentences of paragraph (c) and insert "three" in lieu thereof; delete paragraphs (c)(3) and (c)(7), and redesignate paragraphs (c)(4), (c)(5), and (c)(6) as paragraphs (c)(3), (c)(4), and (c)(5) respectively; and revise paragraph (a) to read as follows:

§ 224.1 Administration group.

(a) The administration group is headed by the Senior Assistant Postmaster General, Administration, who reports to the Deputy Postmaster General. The administration group has responsibility for the following functions: Procurement and supply, real estate and buildings, customer services, international postal affairs, and the judicial officer.

* * * * *

§§ 224.5-224.9 [Redesignated as] §§ 224.6-224.10.

3. Redesignate §§ 224.5, 224.6, 224.7, 224.8, and 224.9 as §§ 224.6, 224.7, 224.8, 224.9 and 224.10 respectively; and add new § 224.5 reading as follows:

§ 224.5 Research and Technology Group.

(a) The Research and Technology Group is headed by the Senior Assistant Postmaster General, Research and Technology, who reports to the Postmaster General. It has overall responsibility for the direction of strategic planning, applied research and development of new technology, and the design of new systems and equipment.

(b) The Research and Technology Group is divided into three units whose heads report to the Senior Assistant Postmaster General, Research and Technology:

(1) *Office of Strategic Planning.* The Office of Strategic Planning is responsible for:

(i) Providing top management with information on trends and developments which may impact on the Postal Service during the period of 5-15 years in the future;

(ii) Identifying and evaluating economic, political, social, technical, and market trends and events impacting on the USPS;

(iii) Identifying potential future needs, problems, threats, or opportunities to aid top management in strategic policy decisions;

(iv) Augmenting or redefining Postal Service goals as needed for review and concurrence by the Board of Governors; and

(v) Developing a projection of long-range business targets as a basis for setting operational objectives.

(2) *Research and development laboratories.* The research and development laboratories is headed by the Executive Director, Research and Development. It is responsible for development and application of new technology to mail handling problems. It con-

ducts original research to develop and promote new concepts and approaches to systems and mechanization for the collection, processing and delivery of mail. It monitors new developments over a broad spectrum of technology and assesses them for possible application to Postal Service functions. It is also responsible for the design and development of new equipment, and equipment modifications. It operates the Postal Laboratory conducting research, test, and evaluation programs.

(3) *International Electronics Message System Office.* The International Electronics Message System Office is responsible for exploring potential new international electronic message systems, and negotiating and monitoring contracts to demonstrate the feasibility of international transmission of electronic messages.

(39 U.S.C. 401(a).)

ROGER P. CRAIG,
Deputy General Counsel.

PAUL J. KEMP,
Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 78-26343 Filed 9-18-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule (editorial amendments).

SUMMARY: The Federal Communications Commission amends its general rules and regulations relating to frequency allocations and radio treaty matters. The amendments are editorial in nature and are necessary to reflect amendments made to other regulations and which were inadvertently omitted at the time.

EFFECTIVE DATE: September 22, 1978

ADDRESS: Federal Communications Commission, 2025 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Fred Thomas/George Sarver, Office of Chief Engineer, 202-632-6350.

SUPPLEMENTARY INFORMATION:

Adopted: September 7, 1978.

Released: September 11, 1978.

In the matter of editorial amendments to part 2 of the Commission's rules and regulations.

1. Amendment of §§ 2.1 and 2.106 of the Commission's rules is necessary to reflect amendments to §§ 74.602, 78.5 and 78.18 of the rules, adopted in Docket Nos. 15586, 16424, and 20539. The § 2.106 amendments were inadvertently omitted in the Commission's orders in those dockets.

2. Accordingly, *It is ordered,* pursuant to authority contained in sections 4(i), 5(d) and 303(r) of the Communications Act of 1934, as amended, that effective September 22, 1978, §§ 2.1 and 2.106 of the rules are amended as set forth in the appendix. Because the amendments are editorial in nature, the prior notice and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, do not apply.

FEDERAL COMMUNICATIONS COMMISSION,
RICHARD D. LICHWARDT,
Executive Director.

APPENDIX

In Part 2 of Chapter I of Title 47 of the Code of Federal Regulations, §§ 2.1 and 2.106 are amended as follows:

1. In § 2.1 the definitions for the cable television relay service and the cable television relay service stations are amended to read as follows:

§ 2.1 Definitions.

* * * * *

Cable Television Relay Service (CARS). A fixed mobile service the stations of which are used for the transmission of television and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting from the point of reception to a terminal point from which the signals are distributed to the public.

Cable Television Relay Service Station. A fixed or mobile station in the cable television relay service.

* * * * *

2. Further § 2.1 is amended by adding in alphabetical order the following definition for cable television relay service pickup station:

§ 2.1 Definition.

* * * * *

Cable Television Relay Service Pickup Station. A land mobile CARS station used for the transmission of television signals and related communications from the scenes of events to cable television studios or headends.

* * * * *

§ 2.106 [Amended.]

3. Section 2.106, of the table of frequency allocations, is amended by deleting footnote designator NG11 in the bands 1990-2110 MHz, 6875-7125 MHz and 12.95-13.2 GHz, by deleting the text of footnote NG11 following the table, by amending the text of footnote NG53, by adding new footnote designator NG118 in bands 1990-2110 MHz, 6875-7125 MHz, 12.7-12.75 GHz, 12.75-12.95 GHz and 12.95-13.2 GHz, by adding in proper numerical sequence the text of footnote NG118 following the table, by adding "Television intercity relay" as a primary class of station to the bands 1990-2110 MHz, 6875-7125 MHz and 12.95-13.2 GHz and by changing "community antenna relay" to "cable television relay" in the 12.7-12.75 and 12.75-12.95 band, as shown below:

* * * * *

Band (MHz) 7	Service 8	Class of station 9
1990-2110 (NG118)	* * *	Television pickup. Television STL. Television intercity relay.
* * * * *		
6875-7125 (NG118)	* * *	Space. Television pickup. Television STL. Television intercity relay.

* * * * *

Band (GHz) 7	Service 8	Class of station 9
12.7-12.75	* * *	Cable television relay. (NG53) Earth. Television intercity relay. Television pickup. (NG53) Television STL.
12.75-12.95 (NG118)	* * *	Cable television relay. (NG53) Television intercity relay. Television pickup. (NG53) Television STL.
12.95-13.2 (NG118)	* * *	Television intercity relay. Television pickup. Television STL.

* * * * *

NG53. In the band 12.7-12.95 GHz television pickup stations and CARS pickup sta-

tions shall be assigned channels on a co-equal basis and shall operate on a secondary basis to stations operating in accordance with the Table of Frequency Allocations.

* * * * *

NG118. Television translator relay stations may be authorized to use frequencies in this band on a secondary basis to stations operating in accordance with the Table of Frequency Allocations.

* * * * *

[FR Doc. 78-26202 Filed 9-18-78; 8:45 am]

[6712-01]

PART 87—AVIATION SERVICES

Editorial Amendments Deleting Obsolete Dates and Provisions in Part 87 of the rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends its regulations relating to aviation services by deleting obsolete dates and provisions which are no longer applicable. The amendments are editorial in nature and the effect is to update the current regulations.

EFFECTIVE DATE: September 26, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

In the matter of editorial amendment to delete obsolete dates and provisions in Part 87 of the Commission's rules; Order.

Adopted: September 11, 1978.

Released: September 12, 1978.

1. Sections 87.295(c) and 87.331(g) of our rules contain dates that have passed and are no longer applicable to our rules. Originally these dates "grandfathered" certain practices to allow for an orderly change from one procedure to another.

2. Section 87.77(d)(6) contains a provision regarding the type acceptance of transmitters in the 10550-10680 MHz band. This section exempted certain transmitters in use prior to July 20, 1962 from type acceptance requirements. Since the aviation services have no current authorizations in the 10550-10680 MHz band, this section is no longer needed in our rules. Any new station must be equipped with a type accepted transmitter.

3. We are deleting these obsolete dates and sections from our rules. Therefore, under the authority of sections 4(i) and 303(c) and (r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules, we are amending §§ 87.77(d)(6), 87.295(c) and 87.331(g) as shown below. Since this amendment is editorial in nature, the public notice, procedure and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, are not applicable.

4. Regarding questions on matters covered in this document contact Kemp J. Beaty, telephone 202-632-7197.

5. In view of the above, *it is ordered*, That the rule amendment set forth below is adopted effective September 26, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. In § 87.77, paragraph (d)(6) is deleted and designated [Reserved].

§ 87.77 Acceptability of transmitters for licensing.

* * * * *

(d) * * *
(6) [Reserved]

* * * * *

2. In § 87.295, paragraph (c) is amended to read as follows:

§ 87.295 Continental U.S. (excluding Alaska).

* * * * *

(c) A telecommunications system of interconnected aeronautical enroute stations which provides communications over an area of air route(s) may employ the offset carrier technique. The use of the offset carrier technique is limited to discrete VHF Carrier frequencies grounded around a frequency listed in paragraph (b) of this section. The carrier frequencies of the individual transmitters of such systems shall not be offset with respect to the authorized frequency by more than ±8 kHz. The tolerance set forth in § 87.65 for transmitters first authorized after January 1, 1974, shall be applicable to the offset carrier frequency when employed. Prior to the use of offset techniques, the Commission must be notified by letter as to the precise offset from the authorized frequency.

3. § 87.331, paragraph (g), footnotes (2) and (3) are amended to read as follows:

§ 87.331 Frequencies available.

* * * * *

(g) * * *

[2]This frequency is available only to stations used in itinerant operations which require that the station be transferred temporarily from time to time to various locations.

[3]Assignments for ground mobile operations on these frequencies will be limited to an area within a 200 mile radius of an associated flight test station at a fixed point.

* * * * *

[FR Doc. 78-26291 Filed 9-18-78; 8:45 am]

[6712-01]

PART 87—AVIATION SERVICES

Editorial Amendments Concerning Availability of Frequencies

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: We are amending our rules concerning aircraft stations to indicate the availability of certain maritime mobile VHF frequencies for communications between ship and aircraft. Our rules, concerning ships, were previously amended to permit these communications and our aircraft rules should indicate this availability. This action will accomplish the amendment.

EFFECTIVE DATE: September 28, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

ORDER

Adopted: September 13, 1978.

Released: September 13, 1978.

In the matter of editorial amendment of § 87.183 of the Commission's rules.

1. Part 83 (stations on shipboard in the maritime services) of our rules contains a provision that permits aircraft to use certain maritime mobile VHF frequencies (§ 83.351(b)(76)). However, this provision is not included in part 87 (aviation services).

2. We are amending § 87.183(j) to reflect the availability of these frequencies and the conditions applicable to the use of maritime mobile VHF frequencies by aircraft. Therefore, under the authority of sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules, we are amending § 87.183(j) as shown below. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

3. Regarding questions on matters covered in this document contact Kemp J. Beaty, telephone 202-632-7197.

4. In view of the above, *it is ordered*, That the rule amendment set forth below is adopted effective September 28, 1978.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

Part 87 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

In § 87.183, paragraph (j)(3) is added to read as follows:

§ 87.183 Frequencies available.

* * * * *

(j) * * *

(3) The frequencies 156.3, 156.375, 156.4, 156.425, 156.450, 156.525, 156.625, 156.8 and 156.9 MHz may be used by aircraft stations to communicate with ship stations under these conditions:

(i) The altitude of aircraft stations shall not exceed 1000 feet, except for reconnaissance aircraft participating in icebreaking operations where an altitude of 1500 feet is allowed;

(ii) The mean power of aircraft station transmitters shall not exceed five watts; however, a power of one watt or less shall be used to the maximum extent possible;

(iii) Aircraft stations shall use intership frequencies only;

(iv) Communications of an aircraft station shall be brief and limited to operations in which stations of the maritime mobile service are primarily involved and where direct communications between the aircraft and ship or coast station is required;

(v) The frequency 156.3 MHz may be used by aircraft stations for safety purposes only and the frequency 156.8 MHz may be used for distress, safety and calling purposes only.

* * * * *

[FR Doc. 78-26280 Filed 9-18-78; 8:45 am]

[6712-01]

[Docket No. 20846]

PART 89—PUBLIC SAFETY RADIO SERVICES

Prescribing Policies and Regulations To Govern Interconnection of Private Land Mobile Radio Systems With the Public, Switched, Telephone Network; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; corrections.

SUMMARY: The Federal Communications Commission corrects a final rule relating to the interconnection of private land mobile radio systems with the public, switched, telephone network published at 43 FR 38396, August 28, 1978. The correction adds a provision relating to reporting requirements which are contained in part 89 and General Accounting Office clearance and effectiveness.

EFFECTIVE DATE: October 16, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John B. Letterman, Industrial and Public Safety Rules Division, Federal Communications Commission, Washington, D.C. 20554, telephone 202-632-6497.

In the matter of amendment of parts 89, 91, 93, and 95 (General Mobile Radio Service, only) of the Commission's rules to prescribe policies and regulations to govern interconnection of private land mobile radio systems with the public, switched, telephone network; correction.

Released: September 12, 1978.

The first report and order in docket No. 20846 (FCC 78-622), adopted August 17, 1978, and released August 23, 1978 (43 FR 38396, August 28, 1978), is corrected to read as follows:

1. On page 38403, first column, paragraph 60 is corrected to read:

"60. Accordingly, *it is ordered*, effective October 16, 1978, That Parts 89, 91, 93, and 95 of the Rules are amended as shown in Appendix B, attached hereto. The reporting requirement specified in Section 89.951(e) is adopted subject to GAO clearance and unless advised to the contrary will be effective November 15, 1978. The authority for this action is found in Sections 4(i) and 303 of the Communications Act of 1934, as amended."

2. On page 38404, third column, in § 89.907(b), the third line, is corrected to read: "by private or leased wire line or fixed".

3. On page 38406, first column, in § 89.953, the third line, is corrected to read: "complished either manually, by a con-".

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO.
Secretary.

[FR Doc. 78-26278 Filed 9-18-78; 8:45 am]

[4910-57]

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 609—TRANSPORTATION FOR ELDERLY AND HANDICAPPED PERSONS

Amendment To Permit Ramp or Lift at Front Door

AGENCY: Urban Mass Transportation Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: New, standard, full-sized urban transit buses ordered with financial assistance from the Urban Mass Transportation Administration (UMTA) after September 30, 1979, must, in accordance with UMTA regulation, be procured by using the Transbus Procurement Requirements bid package. The technical specifications section of that package previously required, among other features, a mandatory front door ramp for boarding and exiting. The specification has been changed to require either a front door ramp or a front door lift. This amendment revises the existing UMTA regulation to reflect this change to the specifications. The preamble to this regulation also announces that the Transbus technical specifications will require a tandem rear axle and that, at a later date, the September 30, 1979, mandate date will probably have to be extended.

EFFECTIVE DATE: This amendment is effective September 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles J. Daniels, Chief, Bus Technology Development Program (UTD-21), Urban Mass Transporta-

tion Administration, Department of Transportation, Washington, D.C. 20590, telephone 202-426-4035.

SUPPLEMENTAL INFORMATION: The attorney-drafter of this regulation is Michael S. Bates, Office of UMTA Chief Counsel.

BACKGROUND

On May 19, 1977, Secretary of Transportation Brock Adams announced his decision to mandate the "Transbus." Transbus is the result of a major Urban Mass Transportation Administration (UMTA) research project to develop an improved, low floor, transit bus that would attract mass ridership, be accessible to those elderly and handicapped persons for whom the high floor and steps of current buses provide serious obstacles, and encourage continued competition among the manufacturers of transit buses. The mandate requires the use of the Transbus Procurement Requirements bid document for all federally assisted procurements of new, standard, full-sized urban transit buses advertised after September 30, 1979. In accordance with the Secretary's decision statement, the complete Transbus Procurement Requirements bid document was issued by UMTA in June 1977.

On September 9, 1977, UMTA's regulations on transportation for elderly and handicapped persons were amended to reflect the Transbus mandate (42 FR 48339, September 23, 1977).

The mandate specifically applied only to federally assisted bus procurements advertised after September 30, 1979. However, UMTA determined that the best method of implementing the mandate was to encourage voluntary Transbus procurements well in advance of that date.

In preparation for the first procurement, UMTA undertook to refine the Transbus Procurement Requirements document in ways that would make timely delivery more likely or improve the bus but would not compromise the basic requirements of the mandate. On March 21, 1978, UMTA published a notice (43 FR 11779) which invited comments on a proposed revision of the original June 1977 specification.

REAFFIRMATION OF TANDEM REAR AXLE

The March 1978 specifications proposed a change from the June 1977 specifications to require a single rear axle instead of a tandem rear axle. It was hoped that this suggested change would reduce costs and make the bus available earlier without compromising the major features of the Transbus mandate or causing significant problems in the design of the bus.

A variety of comments on the proposed single rear axle Transbus specifications was received. Because of the larger tires, wheels, and power transmission components that would be used with a single rear axle, in conjunction with the required low (22 inch) floor at the front door, a sloped interior floor (either a single slope or a double slope), would result. Many resisted the single slope floor version because of the higher rear entrance with an extra interior step that would result. The double slope version, which was generally preferred by transit operators, would not have had the high rear entrance problem, but it would require major redesign by manufacturers and could not be achieved on a schedule significantly shorter than the tandem rear axle bus.

In addition, it was likely that the exterior of the single rear axle bus would be higher in the rear than in the front, and at least some of the inward-facing, longitudinal seats over the forward wheel-wells would be somewhat higher from the floor than standard, again because of the larger tires in conjunction with the low floor at the front door.

Finally, transit operators and some manufacturers expressed concern that a single rear axle Transbus would exceed Federal and many State and local axle weight limits.

UMTA believes that the possibilities that the single rear axle approach seemed to offer in terms of earlier availability, proven components, and lower costs justified the time and effort of proposing such a design for comment. However, in view of what has been learned through the public comment process, we firmly believe that the shortcomings of the single rear axle design would make it an unsatisfactory, interim approach.

As a result, UMTA is convinced that the original tandem rear axle requirement should not be changed. Therefore, the Transbus Procurement Requirements document, which UMTA is releasing for use in the first procurement provides for the original tandem rear axle requirement.

EFFECTIVE DATE OF THE MANDATE

Doubt remains over the actual time required by manfacturers to produce Transbus. Two bus manufacturers have informed us that they do not now believe they can actually begin delivery of Transbuses by early 1981 as had originally been estimated. UMTA believes that the best method at this time to resolve these doubts is to conduct a procurement within the very near future which will require firm bids and firm delivery dates.

Until this process has been completed and firm delivery dates established, the current mandate date of September 30, 1979 will be retained. UMTA also intends to encourge additional early procurements so that all interested bus manufacturers will have the opportunity to compete for contracts.

HANDICAPPED ACCESSIBILITY FEATURES

As a result to the Transbus research and development program in 1976, the recommended Transbus specification permitted either a front door ramp or a door lift for Transbus. A strong preference for the ramp expressed by representatives of the handicapped and elderly at the Department's March 15, 1977 Transbus hearing and in written comments to the docket, as well as the perceived advantages of the ramp over the lift, convinced the Secretary to require a front door ramp in the Transbus mandate in May of 1977. The September 1977 revision of the UMTA regulation, 49 CFR 609.15 (42 FR 48339, September 23, 1977), to reflect the Secretary's mandate referenced the mandatory ramp provision of that mandate.

As a result of public review of the June 1977 and March 1978 versions of the Transbus Procurement Requirements, the Transbus specification has undergone the most thorough review—by way of comments, critique, and suggestions by transit operators, manufacturers, groups representing the elderly and handicapped, and other interested members of the public—ever afforded a bus specification. Comments received as part of this process, including some received as formal comments to the UMTA docket in response to the March 21, 1978 FEDERAL REGISTER invitation, have raised questions about the desirability of the ramp in certain cases. Many have, for example, raised questions regarding the desirability of a ramp in communities with few curbs. In addition, a coalition of 13 organizations of the handicapped and elderly with an active membership of over 5 million has issued a paper supporting the incorporation into the specifications of a local option for a front door lift or ramp. Additionally, wheelchair lift technology appears to be maturing, and improvements can be expected to continue over the next few years. Thus it can be anticipated that both ramps and lifts will be viable options when the first Transbuses are delivered.

After examining the comments and developments described above, we are now persuaded that the ramp and the lift should be allowed as alternatives by local choice for the front entrance. The low floor design of Transbus makes the ramp approach possible and the lift approach simpler. The Department continues to believe that the ramp will prove to be superior in most situations, but feels it appropriate to defer to local choice to accommodate varying needs and circumstances.

The Transbus specification has therefore been revised to provide for a purchaser-specified choice, to be indicated in the bid request document, of either a ramp or a lift at the front entrance. The following amendment to our existing regulation reflects that change in the specification.

Accordingly, 49 CFR 609.15(a) is revised to read as set forth below.

Issued in Washington, D.C. on September 14, 1978.

RICHARD S. PAGE,
Urban Mass Transportation Administrator.

§ 609.15 Buses.

(a) Effective with procurement solicitations containing UMTA-approved specifications issued after September 30, 1979, UMTA grantees may procure new, standard, full-size urban transit buses only if the procurement solicitation utilizes UMTA's bid package entitled "Transbus Procurement Requirements", which requires a stationary floor height of not more than 22 inches, an effective floor height including a kneeling feature of not more than 18 inches, and a front door ramp or front door lift for boarding and exiting.

* * * * *

[FR Doc. 78-26288 Filed 9-18-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1004]

[Docket No. AO-160-A55]

MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider industry proposals to amend certain provisions of the Middle Atlantic milk order. The proposed changes would permit a federation of cooperative associations to operate a pool reserve processing plant, reduce the pooling requirements for both distributing plants and reserve processing plants, and relax diversion provisions. Another proposal would require regulated handlers who buy certain milk from another Federal order market to pay not less than the applicable Middle Atlantic order prices for the milk. Proponents contend that the proposed changes are needed to reflect changed supply-demand conditions and methods of handling the market's reserve milk supplies and to assure orderly milk marketing in the area.

DATE: October 3, 1978.

ADDRESS: Holiday Inn—Center City, 1800 Market Street, Philadelphia, 19103.

FOR FURTHER INFORMATION CONTACT:

Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6273.

SUPPLEMENTAL INFORMATION: Notice is hereby given of a public hearing to be held at the Holiday Inn—Center City, 1800 Market Street, Philadelphia, Pa. 19103, beginning at 9:30 a.m., on October 3, 1978, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Middle Atlantic marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (CFR Part 900.12(d)) with respect to proposals 1 through 4.

The propsed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY PENNMARVA DAIRYMEN'S FEDERATION, INC.

PROPOSAL NO. 1

Revise § 1004.7 (a) and (d) as follows:

§ 1004.7 Pool plant.

* * * * *

(a) A plant from which during the month a volume not less than 40 percent of its receipts described in paragraph (a) (1) or (2) of this section is disposed of as class I milk (except filled milk) and a volume not less than 15 percent of such receipts is disposed of as route disposition (other than as filled milk) in the marketing area:

* * * * *

(d) A reserve processing plant operated by a cooperative association or federation of cooperative associations at which milk from dairy farmers or member cooperatives is received if the total of fluid milk products (except filled milk) transferred from such federation or cooperative association plant(s) to, and the milk of member cooperative or member producers physically received at pool plants pursuant to § 1004.7(a) is not less than 40 percent of the total milk of members of the federation or of member producers during the month: *Provided*, That in the case of a cooperative association that owns and operates both a reserve processing plant and a pool plant pursuant to § 1004.7(a), the provisions of this paragraph shall have been met so long as the volume of the cooperative's member milk pooled at the reserve processing plant does not exceed the volume of sales of class I milk (except filled milk) from the cooperative's pool distributing plant, plus the milk of member producers received directly at pool plants pursuant to § 1004.7(a) of other handlers during the month; *And provided further*, That a cooperative or federation of cooperatives operating a pool reserve processing plant qualified pursuant to this paragraph shall notify the market administrator each month, at the time of filing reports pursuant to § 1004.30 in the detail prescribed by the market administrator, with respect to any receipts from member dairy farmers delivering to such plant not meeting the health requirements for disposition as fluid milk in the marketing area.

* * * * *

PROPOSAL NO. 2

Establish a § 1004.19 as follows:

§ 1004.19 Federation.

Federation means a cooperative formed by two or more cooperative agricultural associations and duly incorporated under the laws of a State.

PROPOSAL NO. 3

Revise the following provisions to require that regulated handlers pay not less than Middle Atlantic order minimum prices for milk received by transfer from a plant pooled under another Federal order by a cooperative association.

§ 1004.73 [Amended]

(a) In § 1004.73(c), after the words "pool plant" add the following: "under this part or any other Federal Order".

§ 1004.79 [Amended]

(b) In § 1004.79, after the words "producer milk" add the following: "or milk from a cooperative association pooled under another Federal Order and".

(c) In § 1004.79, after the words "1004.9(c)" add the following: "or under another Federal Order".

PROPOSED BY MICHAELS DAIRIES, INC.

PROPOSAL NO. 4

§ 1004.12 [Amended]

Reduce the limits on diversions to nonpool plants by amending § 1004.12(d) as follows:

Place a period after the words "nonpool plant", and delete the remainder of § 1004.12(d) including subsections (1) and (2) in their entirety.

PROPOSED BY THE DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE

PROPOSAL NO. 5

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, P.O. Box 710, Alexandria, Va. 22313, or from the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Dairy Division, Agricultural Marketing Service (Washington office only).
Office of the Market Administrator, Middle Atlantic Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on September 14, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-26283 Filed 9-18-78; 8:45 am]

Commodity Credit Corporation

[7 CFR Part 1464]

TOBACCO PLAN PROGRAM

Proposed 1978 Crop Grade Loan Rates—Burley Tobacco

AGENCY: Commodity Credit Corp., USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corp. (USDA), is considering the grade loan rates to be applied to the various grades of 1978-crop burley tobacco to provide price support as required by the Agricultural Act of 1949, as amended. You are invited to submit views and recommendations concerning the proposed rates.

DATES: Written comments must be received by November 3, 1978, in order to be sure of consideration.

ADDRESS: Send comments to Acting Director, Price Support and Loan Division, ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

R. P. Hieronymus, 202-447-6695.

SUPPLEMENTARY INFORMATION: Section 106 of the Agricultural Act of 1949, as amended, requires that the 1978 crop of burley tobacco be supported at the level of 124.7 cents per pound. It is anticipated that price support will be provided through loans to producer associations which will receive the tobacco from the producers and make price support advances to the producers for the tobacco received. The price support advances would be based on the proposed grade loan rates, which would average the required level of support when weighted by the estimated grade percentages, in accordance with section 403 of the act. The price support advances to producers would be the amounts determined by multiplying the pounds of each grade received by the respective grade loan rate less 1 cent per pound which the producers' associations are authorized to deduct and to apply against overhead costs.

PROPOSED RULE

Accordingly, it is proposed that 7 CFR Part 1464 be amended by revising § 1464.21 to read as follows effective for the 1978 crop of burley tobacco:

§ 1464.21 1978 Crop Burley Tobacco, type 31, loan schedule [1]

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[1] The loan rates listed are applicable to burley tobacco which is tied in hands or packed in bales and which is eligible tobacco as defined by the regulations. Only the original producer is eligible to receive advances. Tobacco graded "U" (unsound), "W" (wet), "No-G" (no grade), or scrap will not be accepted. Cooperatives are authorized to deduct $1 per hundred pounds to apply against overhead costs.

[Dollars per hundred pound, farm sales weight]

Grade	Loan Rate	Grade	Loan Rate	Grade	Loan Rate
B1F	139	B3GR	113	C1F	139
B2F	137	B4GR	111	C2F	137
B3F	135	B5GR	108	C3F	135
B4F	132			C4F	132
B5F	128	T3F	131	C5F	128
		T4F	125		
B1FR	138	T5F	118	C3K	124
B2FR	136			C4K	120
B3FR	134	T3FR	128	C5K	114
B4FR	131	T4FR	124		
B5FR	127	T5FR	115	C3M	130
				C4M	128
B1R	135	T3R	122	C5M	119
B2R	133	T4R	119		
B3R	131	T5R	113	C3V	126
B4R	128			C4V	123
B5R	122	T4D	110	C5V	117
		T5D	106		
B4D	115			C4G	113
B5D	110	T4K	109	C5G	106
		T5K	105		
B3K	125			X1L	138
B4K	123	T4VF	118	X2L	136
B5K	117	T5VF	111	X3L	134
				X4L	129
B3M	129	T4VR	111	X5L	124
B4M	123	T5VR	107		
B5M	113			X1F	138
		T4GF	106	X2F	136
B3VF	130	T5GF	102	X3F	134
B4VF	124			X4F	129
B5VF	121	T4GR	104	X5F	123
		T5GR	99		
B3VR	125			X4M	124
B4VR	120	C1L	139	X5M	112
B5VR	116	C2L	137		
		C3L	135	X4G	111
B3GF	118	C4L	132	X5G	103
B4GF	116	C5L	128		
B5GF	112				
M1F	116	M3FR	112	N1F	100
M2F	115	M4FR	110		
M3F	114	M5FR	106	N1R	98
M4F	112			N2R	92
M5F	110	N1L	104		
		N2L	97	N1G	91
				N2G	83

Prior to making any determination, the Department will give consideration to comments, views and recommendations submitted in writing to the acting director, Price Support and Loan Division.

All written submission will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday in Room 3741, South Building, USDA, 14th and Independence Avenue SW., Washington D.C., 20013.

NOTE: CCC has determined that this document does not contain a significant proposal having major economic consequences for the general economy requiring preparation of a regulatory analysis under Executive Order 12044.

Based on an assessment of the environmental impacts of the proposed action, it has also been determined that an Environmental Impact Statement need not be prepared since the proposals will have no significant effect on the quality of the human environment.

Signed at Washington, D.C. on September 12, 1978.

STEWART N. SMITH,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 78-26166 Filed 9-18-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

[12 CFR Part 226]

[Reg. Z; FC-0154]

COMPUTATION OF ANNUAL PERCENTAGE RATES FOR HUD/FHA SECTION 245 GRADUATED PAYMENT MORTGAGES

Proposed Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment a proposed official staff interpretation approving the use of certain tables and accompanying instructions prepared by the U.S. Department of Housing and Urban Development to be used to compute the annual percentage rate on graduated payment mortgages under the HUD/FHA section 245 Experimental Financing Program. The proposed interpretation is intended to assist in computation of the annual percentage rate in such mortgages.

DATE: Comments must be received on or before October 19, 1978.

ADDRESS: Comments including reference to FC-0154 to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3867.

SUPPLEMENTARY INFORMATION: (1) In order to assist in the computation of annual percentage rates in graduated payment mortgages made under the HUD/FHA section 245 Experimental Financing Program, the Board staff proposes to approve use of tables and accompanying instructions prepared by the Actuarial Division of the U.S. Department of Housing and Urban Development.

The Board staff has reviewed the tables and instructions prepared by HUD and has determined that they yield accurate annual percentage rates. The staff would appreciate any comments the public might have on this matter, particularly regarding whether the instructions and tables, which are attached to the proposed official staff interpretation, are clear, understandable, and easy to use.

(2) To aid in the consideration of this matter, interested persons are invited to submit relevant data, comments or arguments. All such materials should be submitted in writing to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and should be received not later than October 19, 1978. Such information will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

(3) Pursuant to the authority granted in 15 U.S.C. 1640(f), the Board staff proposes to issue the following official staff interpretation:

Mr. CHESTER C. FOSTER,
Acting Director, Actuarial Division, Department of Housing and Urban Development, , Washington, D.C.

DEAR MR. FOSTER: This letter is in response to our recent correspondence and conversations concerning proper computation of the annual percentage rate for graduated payment mortgages made under the Department of Housing and Urban Development's FHA Section 245 Experimental Financing Program. You have requested that the Board staff review and verify that the attached tables, when used in accordance with the attached instructions, yield an accurate annual percentage rate for purposes of Regulation Z.

The staff has reviewed the attached materials and concludes that, subject to the limitations set forth below, use of the tables in accordance with the instructions which accompany them results in an accurate annual percentage rate.

It should be noted that this approach may be used only when the first payment period, i.e., the period from the date on which the finance charge begins to accrue to the date of the first payment, falls within the ranges describe in the minor irregularities provisions of Regulation Z, § 226.5(d) and Interpretation § 226.503. This means that the first payment must be due not more than 62 days after consummation of the loan in order for use of the tables to yield an accurate annual percentage rate. Use of this method also presumes that the monthly payments have been properly calculated using HUD Handbood 4240.2, dated October 27, 1976. Finally, we note that these tables and instructions cannot be used for graduated payment plans involving private mortgage insurance premiums, unless such insurance premiums are computed in the same manner as the FHA mortgage insurance premiums involved in the Section 245 Graduated Payment Mortgage program.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(2) of the regulation, and it is strictly limited to the situation discussed herein.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

Attachments.

Board of Governors of the Federal Reserve System, September 5, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

INSTRUCTIONS FOR COMPUTING ANNUAL PERCENTAGE RATES FOR COMPLIANCE WITH REGULATION Z

These instructions are to be used in conjunction with the attached annual percentage rate tables prepared by the Actuarial Division, Office of Housing and Urban Development. The tables are applicable only to FHA-insured 30-year level payment and graduated payment (section 245) loans where the annual mortgage insurance premium (MIP) is one-half of 1 percent.

The annual percentage rate (APR) computation in the tables assumes that the closing takes place exactly 1 month prior to the due date of the first payment. The following three examples show how to adjust the net proceeds when the date of closing is not 1 month prior to the first payment, in order to provide a more accurate APR.

NOTE.—For purposes of this computation, closings must be not more than 62 days before the due date of the first payment.

Example No. 1—*Closings held more than 1 month prior to due date of first payment and interim interest collected at closing.*

(a) Contract interest rate—8¾ percent.
(b) Loan type—GPM Plan V.
(c) Due date of first payment—June 1, 1978.
(d) Date of closing—April 10, 1978.
(e) Loan amount—$42,000.
(f) Prepaid finance charges—$2,311.44.
(g) Net proceeds (e-f)—$39,688.56.
(h) Initial mortgage interest (also included in (f))—$211.44.

Compute adjusted net proceeds per $100 of face.

$39,688.56 (net proceeds from (g)) plus $211.44 (initial mortgage interest from (h)) times 100, divided by $42,000 (loan amount from (e)) equals 95.000.

Find closest net proceeds per hundred from the APR table for 8¾ percent interest and column for GPM Plan V.

Closest net proceeds per hundred—95.036.

Read across for APR—9 80 percent.

Example No. 2—*Closing held more than 1 month prior to due date of first payment and interim interest collected with the first payment or 1 month prior to first payment.*

(a) Contract interest rate—8½ percent.

(b) Loan type—GPM Plan III.

(c) Due date of first payment—May 1, 1978.

(d) Date of closing—March 17, 1978.

(e) Loan amount—$20,000

(f) Prepaid finance charges—$1,200.

(g) Net proceeds (e-f)—$18,800

(h) Initial mortgage interst (not included in (f))—$69 86.

Compute adjusted [1] net proceeds per $100 of face.

$18,800 (net proceeds from (g)) times 100 divided by $20,000 (loan amount from (e)) equals 94.00.

Find closest net proceeds per hundred from the APR table for 8½ percent interest and column for GPM Plan III.

Closest net proceeds per hundred—93-972.

Read across for APR 9 67 percent.

Example No. 3—*Closing is held less than 1 month prior to due date of first payment and interest from date 1 month prior to first payment date to the closing date is rebated to purchaser at closing.*

(a) Contract interest rate—8½ percent.

(b) Loan type—GPM Plan II.

(c) Due date of first payment -April 1, 1978.

(d) Date of closing—March 11, 1978.

(e) Loan amount- $35,000

(f) Prepaid finance charges -$1,843.49.

(g) Net proceeds (e-f)- $33,156 51

(h) Initial mortgage interest paid to borrower at closing or credited to closing costs (Note: In this example, interest (h) has been deducted from prepaid charges (f)).. $81 51.

Compute adjusted net proceeds per $100 of face.

$33,156.51 (net proceeds from (g)) plus $81 51 (initial mortgate interest from (h)) times 100 divided by $35,000 (loan amount from (e)) equals 94.500

Find closest net proceeds per hundred from the APR table for 8½ percent interest and column for GPM Plan II

Closest net proceeds per hundred 94.507

Read across for APR -9 62 percent.

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[1] When interim mortgage interest is collected (or rebated) at any time other than at closing, it has not been deducted from net proceeds (g) and therefore it is not necessary to add it to (or subtract it from, in the case of rebate) the net proceeds before determining the APR.

TABLES SHOWING ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS FOR FHA-INSURED LEVEL PAYMENT AND GRADUATED PAYMENT MORTGAGE AMORTIZATION PLANS AUTHORIZED UNDER SECTION 245

Description of the Graduated Payment Mortgage (GPM) Plans Shown in the Accompanying Tables

PLAN	DESCRIPTION
I	5 years of increasing payments at 2-1/2 percent each year
II	5 years of increasing payments at 5 percent each year
III	5 years of increasing payments at 7-1/2 percent each year
IV	10 years of increasing payments at 2 percent each year
V	10 years of increasing payments at 3 percent each year

Prepared by:
Actuarial Division
Office of Housing
Department of Housing
and Urban Development

TABLE 1

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 7.75 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL	GPM PLANS						LEVEL	GPM PLANS				
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
8.25	99.999	99.999	99.999	99.999	99.999	99.999	8.60	96.837	96.767	96.703	96.643	96.686	96.613
8.26	99.906	99.905	99.903	99.901	99.902	99.900	8.61	96.749	96.678	96.611	96.549	96.594	96.519
8.27	99.814	99.810	99.806	99.803	99.805	99.801	8.62	96.661	96.588	96.520	96.456	96.502	96.425
8.28	99.721	99.715	99.710	99.704	99.708	99.702	8.63	96.573	96.498	96.428	96.363	96.410	96.331
8.29	99.629	99.621	99.614	99.607	99.611	99.603	8.64	96.486	96.409	96.337	96.270	96.318	96.237
8.30	99.537	99.527	99.517	99.509	99.515	99.504	8.65	96.399	96.320	96.246	96.178	96.227	96.144
8.31	99.445	99.433	99.422	99.411	99.418	99.406	8.66	96.311	96.231	96.155	96.085	96.136	96.051
8.32	99.353	99.339	99.326	99.313	99.322	99.307	8.67	96.224	96.142	96.064	95.993	96.044	95.957
8.33	99.261	99.245	99.230	99.216	99.226	99.209	8.68	96.137	96.053	95.974	95.900	95.953	95.864
8.34	99.170	99.152	99.135	99.119	99.130	99.111	8.69	96.050	95.964	95.883	95.808	95.862	95.771
8.35	99.078	99.058	99.039	99.022	99.034	99.013	8.70	95.964	95.875	95.793	95.716	95.771	95.679
8.36	98.987	98.965	98.944	98.925	98.939	98.915	8.71	95.877	95.787	95.703	95.624	95.681	95.586
8.37	98.896	98.872	98.849	98.828	98.843	98.817	8.72	95.791	95.698	95.613	95.533	95.590	95.494
8.38	98.805	98.779	98.754	98.731	98.748	98.720	8.73	95.704	95.610	95.523	95.441	95.500	95.401
8.39	98.714	98.686	98.659	98.635	98.652	98.623	8.74	95.618	95.522	95.433	95.349	95.410	95.309
8.40	98.623	98.593	98.565	98.539	98.557	98.525	8.75	95.532	95.434	95.343	95.258	95.320	95.217
8.41	98.533	98.500	98.470	98.442	98.462	98.428	8.76	95.446	95.346	95.254	95.167	95.230	95.125
8.42	98.442	98.408	98.376	98.346	98.368	98.331	8.77	95.360	95.259	95.164	95.076	95.140	95.033
8.43	98.352	98.316	98.282	98.250	98.273	98.235	8.78	95.274	95.171	95.075	94.985	95.050	94.942
8.44	98.262	98.223	98.188	98.155	98.178	98.138	8.79	95.189	95.084	94.986	94.894	94.960	94.850
8.45	98.172	98.131	98.094	98.059	98.084	98.042	8.80	95.103	94.997	94.897	94.804	94.871	94.759
8.46	98.082	98.040	98.000	97.964	97.990	97.945	8.81	95.018	94.909	94.808	94.713	94.782	94.667
8.47	97.992	97.948	97.907	97.868	97.896	97.849	8.82	94.933	94.822	94.719	94.623	94.693	94.576
8.48	97.902	97.856	97.813	97.773	97.802	97.753	8.83	94.848	94.735	94.631	94.533	94.604	94.485
8.49	97.813	97.765	97.720	97.678	97.708	97.657	8.84	94.763	94.649	94.542	94.443	94.515	94.395
8.50	97.723	97.673	97.627	97.583	97.614	97.562	8.85	94.678	94.562	94.454	94.353	94.426	94.304
8.51	97.634	97.582	97.534	97.489	97.521	97.466	8.86	94.594	94.476	94.365	94.263	94.337	94.213
8.52	97.545	97.491	97.441	97.394	97.428	97.371	8.87	94.509	94.389	94.277	94.173	94.249	94.123
8.53	97.456	97.400	97.348	97.300	97.334	97.276	8.88	94.425	94.303	94.189	94.084	94.160	94.033
8.54	97.367	97.309	97.255	97.205	97.241	97.180	8.89	94.340	94.217	94.102	93.994	94.072	93.943
8.55	97.278	97.219	97.163	97.111	97.148	97.085	8.90	94.256	94.131	94.014	93.905	93.984	93.853
8.56	97.190	97.128	97.071	97.017	97.056	96.991	8.91	94.172	94.045	93.926	93.816	93.896	93.763
8.57	97.101	97.038	96.979	96.923	96.963	96.896	8.92	94.088	93.959	93.839	93.727	93.808	93.673
8.58	97.013	96.948	96.886	96.830	96.870	96.802	8.93	94.004	93.874	93.752	93.638	93.721	93.584
8.59	96.925	96.857	96.795	96.736	96.778	96.707	8.94	93.921	93.788	93.665	93.549	93.633	93.494

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 7.75 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL PMT	GPM PLANS I	II	III	IV	V		LEVEL PMT	GPM PLANS I	II	III	IV	V
8.95	93.837	93.703	93.578	93.461	93.546	93.405	9.10	92.599	92.438	92.288	92.148	92.250	92.082
8.96	93.754	93.618	93.491	93.372	93.458	93.316	9.11	92.517	92.355	92.203	92.061	92.165	91.995
8.97	93.671	93.533	93.404	93.284	93.371	93.227	9.12	92.436	92.272	92.118	91.975	92.080	91.908
8.98	93.587	93.448	93.317	93.196	93.284	93.138	9.13	92.355	92.188	92.033	91.889	91.995	91.821
8.99	93.504	93.363	93.231	93.108	93.197	93.049	9.14	92.273	92.105	91.949	91.803	91.910	91.734
9.00	93.421	93.278	93.144	93.020	93.111	92.961	9.15	92.192	92.023	91.864	91.717	91.825	91.647
9.01	93.339	93.194	93.058	92.932	93.024	92.872	9.16	92.111	91.940	91.780	91.631	91.740	91.561
9.02	93.256	93.109	92.972	92.844	92.938	92.784	9.17	92.031	91.857	91.696	91.545	91.656	91.475
9.03	93.173	93.025	92.886	92.757	92.851	92.696	9.18	91.950	91.775	91.612	91.460	91.571	91.388
9.04	93.091	92.941	92.800	92.669	92.765	92.607	9.19	91.869	91.693	91.528	91.374	91.487	91.302
9.05	93.009	92.857	92.715	92.582	92.679	92.520	9.20	91.789	91.610	91.444	91.289	91.403	91.216
9.06	92.927	92.773	92.629	92.495	92.593	92.432	9.21	91.708	91.528	91.360	91.204	91.319	91.131
9.07	92.844	92.689	92.543	92.408	92.507	92.344	9.22	91.628	91.446	91.277	91.119	91.235	91.045
9.08	92.763	92.605	92.458	92.321	92.421	92.257	9.23	91.548	91.364	91.193	91.034	91.151	90.959
9.09	92.681	92.521	92.373	92.234	92.336	92.169	9.24	91.468	91.283	91.110	90.949	91.067	90.874

TABLE 2

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 8.00 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						
	LEVEL	GPM PLANS						LEVEL	GPM PLANS					
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V	
8.50	99.999	99.999	99.999	99.999	99.999	99.999	8.85	96.882	96.813	96.748	96.688	96.732	96.659	
8.51	99.908	99.906	99.904	99.902	99.904	99.901	8.86	96.796	96.724	96.658	96.596	96.641	96.566	
8.52	99.817	99.813	99.809	99.805	99.808	99.804	8.87	96.709	96.636	96.568	96.504	96.550	96.474	
8.53	99.726	99.719	99.714	99.709	99.712	99.706	8.88	96.623	96.548	96.477	96.412	96.460	96.381	
8.54	99.635	99.627	99.619	99.612	99.617	99.608	8.89	96.537	96.459	96.387	96.320	96.370	96.289	
8.55	99.544	99.534	99.524	99.515	99.522	99.511	8.90	96.450	96.371	96.298	96.229	96.279	96.196	
8.56	99.453	99.441	99.430	99.419	99.427	99.414	8 91	96.364	96.284	96.208	96.137	96.189	96.104	
8.57	99.363	99.348	99.335	99.323	99.332	99.317	8.92	96.279	96.196	96.118	96.046	96.099	96.012	
8.58	99.272	99.256	99.241	99.227	99.237	99.220	8.93	96.193	96.108	96.029	95.955	96.009	95.921	
8.59	99.182	99.164	99.147	99.131	99.142	99.123	8.94	96.107	96.021	95.940	95.864	95.920	95.829	
8.60	99.092	99.072	99.053	99.035	99.048	99.027	8.95	96.022	95.933	95.850	95.773	95.830	95.737	
8.61	99.002	98.980	98.959	98.939	98.953	98.930	8.96	95.936	95.846	95.761	95.683	95.741	95.646	
8.62	98.912	98.888	98.865	98.844	98.859	98.834	8.97	95.851	95.759	95.673	95.592	95.651	95.555	
8.63	98.822	98.796	98.772	98.749	98.765	98.738	8.98	95.766	95.672	95.584	95.502	95.562	95.463	
8.64	98.733	98.704	98.678	98.653	98.671	98.642	8.99	95.681	95.585	95.495	95.411	95.473	95.372	
8.65	98.643	98.613	98.585	98.558	98.578	98.546	9.00	95.596	95.498	95.407	95.321	95.384	95.282	
8.66	98.554	98.522	98.492	98.463	98.484	98.450	9.01	95.511	95.412	95.318	95.231	95.295	95.191	
8.67	98.465	98.431	98.399	98.369	98.390	98.354	9.02	95.427	95.325	95.230	95.141	95.207	95.100	
8.68	98.376	98.340	98.306	98.274	98.297	98.259	9.03	95.342	95.239	95.142	95.052	95.118	95.010	
8.69	98.287	98.249	98.213	98.180	98.204	98.164	9.04	95.258	95.152	95.054	94.962	95.030	94.920	
8.70	98.198	98.158	98.120	98.085	98.111	98.069	9.05	95.174	95.066	94.966	94.873	94.942	94.829	
8.71	98.109	98.067	98.028	97.991	98.018	97.974	9.06	95.089	94.980	94.878	94.783	94.854	94.739	
8.72	98.021	97.977	97.936	97.897	97.925	97.879	9.07	95.005	94.895	94.791	94.694	94.766	94.650	
8.73	97.933	97.887	97.843	97.803	97.833	97.784	9.08	94.922	94.809	94.703	94.605	94.678	94.560	
8.74	97.844	97.796	97.751	97.710	97.740	97.690	9.09	94.838	94.723	94.616	94.516	94.590	94.470	
8.75	97.756	97.706	97.660	97.616	97.648	97.595	9.10	94.754	94.638	94.529	94.427	94.502	94.381	
8.76	97.668	97.616	97.568	97.522	97.555	97.501	9.11	94.671	94.552	94.442	94.339	94.415	94.291	
8.77	97.580	97.527	97.476	97.429	97.463	97.407	9.12	94.587	94.467	94.355	94.250	94.328	94.202	
8.78	97.493	97.437	97.385	97.336	97.372	97.313	9.13	94.504	94.382	94.268	94.162	94.241	94.113	
8.79	97.405	97.347	97.293	97.243	97.280	97.219	9.14	94.421	94.297	94.182	94.074	94.154	94.024	
8.80	97.318	97.258	97.202	97.150	97.188	97.125	9.15	94.338	94.212	94.095	93.986	94.067	93.935	
8.81	97.230	97.169	97.111	97.057	97.097	97.032	9.16	94.255	94.128	94.009	93.898	93.980	93.847	
8.82	97.143	97.080	97.020	96.965	97.005	96.938	9.17	94.172	94.043	93.922	93.810	93.893	93.758	
8.83	97.056	96.991	96.929	96.872	96.914	96.845	9.18	94.090	93.959	93.836	93.722	93.807	93.670	
8.84	96.969	96.902	96.839	96.780	96.823	96.752	9.19	94.007	93.874	93.750	93.634	93.720	93.581	

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 8.00 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL PMT	GPM PLANS I	II	III	IV	V		LEVEL PMT	GPM PLANS I	II	III	IV	V
9.20	98.925	93.790	93.664	93.547	93.634	93.493	9.35	92.703	92.542	92.391	92.251	92.356	92.187
9.21	93.843	93.706	93.579	93.460	93.548	93.405	9.36	92.623	92.460	92.307	92.165	92.271	92.101
9.22	93.760	93.622	93.493	93.372	93.462	93.317	9.37	92.543	92.378	92.224	92.080	92.187	92.015
9.23	93.678	93.538	93.407	93.285	93.376	93.230	9.38	92.462	92.296	92.140	91.995	92.103	91.929
9.24	93.597	93.455	93.322	93.198	93.290	93.142	9.39	92.382	92.214	92.057	91.910	92.019	91.844
9.25	93.515	93.371	93.237	93.112	93.205	93.055	9.40	92.302	92.132	91.973	91.825	91.936	91.758
9.26	93.433	93.288	93.152	93.025	93.119	92.967	9.41	92.222	92.050	91.890	91.740	91.852	91.673
9.27	93.352	93.204	93.067	92.938	93.034	92.880	9.42	92.143	91.969	91.807	91.655	91.769	91.588
9.28	93.270	93.121	92.982	92.852	92.949	92.793	9.43	92.063	91.888	91.724	91.571	91.685	91.503
9.29	93.189	93.038	92.897	92.766	92.863	92.706	9.44	91.983	91.806	91.641	91.487	91.602	91.418
9.30	93.108	92.955	92.812	92.680	92.778	92.619	9.45	91.904	91.725	91.558	91.402	91.519	91.333
9.31	93.027	92.872	92.728	92.593	92.694	92.533	9.46	91.825	91.644	91.475	91.318	91.436	91.248
9.32	92.946	92.789	92.644	92.508	92.609	92.446	9.47	91.746	91.563	91.393	91.234	91.353	91.163
9.33	92.865	92.707	92.559	92.422	92.524	92.360	9.48	91.666	91.482	91.311	91.150	91.270	91.079
9.34	92.784	92.624	92.475	92.336	92.440	92.273	9.49	91.588	91.402	91.228	91.066	91.188	90.994

TABLE 3

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 8.25 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						
	LEVEL	GPM PLANS						LEVEL	GPM PLANS					
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
8.75	99.999	99.999	99.999	99.999	99.999	99.999	9.10	96.928	96.858	96.793	96.732	96.777	96.705
8.76	99.909	99.907	99.905	99.904	99.905	99.903	9.11	96.842	96.771	96.704	96.641	96.688	96.613
8.77	99.819	99.815	99.812	99.808	99.811	99.806	9.12	96.757	96.683	96.615	96.551	96.598	96.522
8.78	99.730	99.724	99.718	99.713	99.716	99.710	9.13	96.672	96.596	96.526	96.460	96.509	96.430
8.79	99.640	99.632	99.624	99.617	99.622	99.614	9.14	96.587	96.509	96.437	96.370	96.420	96.339
8.80	99.551	99.540	99.531	99.522	99.529	99.518	9.15	96.502	96.422	96.348	96.279	96.331	96.248
8.81	99.461	99.449	99.438	99.427	99.435	99.422	9.16	96.417	96.336	96.260	96.189	96.242	96.157
8.82	99.372	99.358	99.344	99.332	99.341	99.326	9.17	96.332	96.249	96.172	96.099	96.153	96.067
8.83	99.283	99.267	99.251	99.237	99.248	99.231	9.18	96.248	96.163	96.083	96.009	96.065	95.976
8.84	99.194	99.176	99.159	99.143	99.154	99.135	9.19	96.163	96.076	95.995	95.919	95.976	95.885
8.85	99.105	99.085	99.066	99.048	99.061	99.040	9.20	96.079	95.990	95.907	95.830	95.888	95.795
8.86	99.016	98.994	98.973	98.954	98.968	98.945	9.21	95.995	95.904	95.819	95.740	95.800	95.705
8.87	98.928	98.904	98.881	98.860	98.875	98.850	9.22	95.911	95.818	95.732	95.651	95.711	95.615
8.88	98.840	98.813	98.789	98.766	98.783	98.755	9.23	95.827	95.732	95.644	95.562	95.623	95.525
8.89	98.751	98.723	98.696	98.672	98.690	98.660	9.24	95.743	95.647	95.557	95.473	95.536	95.435
8.90	98.663	98.633	98.604	98.578	98.598	98.566	9.25	95.659	95.561	95.469	95.384	95.448	95.346
8.91	98.575	98.543	98.513	98.484	98.505	98.471	9.26	95.576	95.476	95.382	95.295	95.360	95.256
8.92	98.487	98.453	98.421	98.391	98.413	98.377	9.27	95.492	95.390	95.295	95.206	95.273	95.167
8.93	98.399	98.363	98.329	98.298	98.321	98.283	9.28	95.409	95.305	95.208	95.118	95.186	95.077
8.94	98.312	98.274	98.238	98.204	98.229	98.189	9.29	95.326	95.220	95.121	95.029	95.098	94.988
8.95	98.224	98.184	98.146	98.111	98.137	98.095	9.30	95.243	95.135	95.035	94.941	95.011	94.899
8.96	98.137	98.095	98.055	98.018	98.046	98.001	9.31	95.160	95.050	94.948	94.853	94.924	94.810
8.97	98.050	98.006	97.964	97.926	97.954	97.908	9.32	95.077	94.966	94.862	94.765	94.838	94.722
8.98	97.963	97.916	97.873	97.833	97.863	97.815	9.33	94.994	94.881	94.775	94.677	94.751	94.633
8.99	97.876	97.828	97.782	97.740	97.772	97.721	9.34	94.912	94.797	94.689	94.589	94.664	94.545
9.00	97.789	97.739	97.692	97.648	97.681	97.628	9.35	94.829	94.712	94.603	94.501	94.578	94.456
9.01	97.702	97.650	97.601	97.556	97.590	97.535	9.36	94.747	94.628	94.517	94.414	94.492	94.368
9.02	97.616	97.561	97.511	97.464	97.499	97.442	9.37	94.665	94.544	94.432	94.326	94.406	94.280
9.03	97.529	97.473	97.421	97.372	97.408	97.350	9.38	94.582	94.460	94.346	94.239	94.320	94.192
9.04	97.443	97.385	97.331	97.280	97.318	97.257	9.39	94.501	94.376	94.260	94.152	94.234	94.105
9.05	97.357	97.297	97.241	97.188	97.227	97.165	9.40	94.419	94.293	94.175	94.065	94.148	94.017
9.06	97.271	97.209	97.151	97.097	97.137	97.072	9.41	94.337	94.209	94.090	93.978	94.062	93.929
9.07	97.185	97.121	97.061	97.005	97.047	96.980	9.42	94.255	94.126	94.005	93.891	93.977	93.842
9.08	97.099	97.033	96.972	96.914	96.957	96.888	9.43	94.174	94.042	93.920	93.805	93.891	93.755
9.09	97.013	96.945	96.882	96.823	96.867	96.796	9.44	94.092	93.959	93.835	93.718	93.806	93.668

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 8.25 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL PMT	GPM PLANS I	II	III	IV	V		LEVEL PMT	GPM PLANS I	II	III	IV	V
9.45	94.011	93.876	93.750	93.632	93.721	93.581	9.60	92.806	92.645	92.493	92.352	92.459	92.291
9.46	93.930	93.793	93.665	93.546	93.636	93.494	9.61	92.727	92.563	92.410	92.268	92.376	92.206
9.47	93.849	93.710	93.581	93.460	93.551	93.407	9.62	92.648	92.482	92.328	92.183	92.293	92.121
9.48	93.768	93.628	93.496	93.374	93.466	93.320	9.63	92.569	92.401	92.245	92.099	92.210	92.037
9.49	93.687	93.545	93.412	93.288	93.382	93.234	9.64	92.490	92.321	92.163	92.015	92.128	91.952
9.50	93.607	93.463	93.328	93.202	93.297	93.148	9.65	92.411	92.240	92.081	91.932	92.045	91.868
9.51	93.526	93.380	93.244	93.117	93.213	93.061	9.66	92.332	92.159	91.998	91.848	91.962	91.784
9.52	93.446	93.298	93.160	93.031	93.129	92.975	9.67	92.253	92.079	91.916	91.764	91.880	91.699
9.53	93.365	93.216	93.076	92.946	93.045	92.889	9.68	92.175	91.999	91.834	91.681	91.798	91.615
9.54	93.285	93.134	92.993	92.861	92.961	92.804	9.69	92.096	91.918	91.752	91.597	91.716	91.531
9.55	93.205	93.052	92.909	92.776	92.877	92.718	9.70	92.018	91.838	91.671	91.514	91.634	91.448
9.56	93.125	92.970	92.826	92.691	92.793	92.632	9.71	91.939	91.758	91.589	91.431	91.552	91.364
9.57	93.045	92.889	92.742	92.606	92.709	92.547	9.72	91.861	91.679	91.508	91.348	91.470	91.280
9.58	92.966	92.807	92.659	92.521	92.626	92.461	9.73	91.783	91.599	91.426	91.265	91.388	91.197
9.59	92.886	92.726	92.576	92.436	92.543	92.376	9.74	91.705	91.519	91.345	91.183	91.307	91.114

TABLE 4

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 8.50 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL	GPM PLANS						LEVEL	GPM PLANS				
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
9.00	99.999	99.999	99.999	99.999	99.999	99.999	9.35	96.972	96.902	96.837	96.776	96.822	96.750
9.01	99.911	99.909	99.907	99.905	99.906	99.904	9.36	96.888	96.816	96.749	96.686	96.734	96.659
9.02	99.822	99.818	99.814	99.811	99.813	99.809	9.37	96.804	96.730	96.661	96.597	96.646	96.569
9.03	99.734	99.727	99.722	99.716	99.720	99.714	9.38	96.720	96.644	96.573	96.507	96.558	96.479
9.04	99.645	99.637	99.630	99.622	99.628	99.619	9.39	96.636	96.558	96.486	96.418	96.470	96.389
9.05	99.557	99.547	99.537	99.529	99.535	99.525	9.40	96.552	96.473	96.398	96.329	96.382	96.299
9.06	99.469	99.457	99.445	99.435	99.443	99.430	9.41	96.468	96.387	96.311	96.240	96.294	96.210
9.07	99.381	99.367	99.354	99.341	99.351	99.336	9.42	96.385	96.302	96.224	96.151	96.207	96.120
9.08	99.293	99.277	99.262	99.248	99.258	99.241	9.43	96.302	96.216	96.137	96.062	96.119	96.031
9.09	99.206	99.187	99.170	99.154	99.166	99.147	9.44	96.218	96.131	96.050	95.974	96.032	95.941
9.10	99.118	99.098	99.079	99.061	99.075	99.053	9.45	96.135	96.046	95.963	95.885	95.945	95.852
9.11	99.031	99.009	98.988	98.968	98.983	98.959	9.46	96.052	95.961	95.876	95.797	95.858	95.763
9.12	98.944	98.919	98.896	98.875	98.891	98.866	9.47	95.969	95.877	95.790	95.709	95.771	95.674
9.13	98.856	98.830	98.805	98.782	98.800	98.772	9.48	95.887	95.792	95.704	95.621	95.684	95.586
9.14	98.769	98.741	98.715	98.690	98.708	98.679	9.49	95.804	95.707	95.617	95.533	95.597	95.497
9.15	98.683	98.652	98.624	98.597	98.617	98.586	9.50	95.721	95.623	95.531	95.445	95.511	95.409
9.16	98.596	98.563	98.533	98.505	98.526	98.492	9.51	95.639	95.539	95.445	95.357	95.424	95.320
9.17	98.509	98.475	98.443	98.413	98.435	98.399	9.52	95.557	95.455	95.359	95.270	95.338	95.232
9.18	98.423	98.386	98.352	98.321	98.345	98.307	9.53	95.475	95.371	95.273	95.182	95.252	95.144
9.19	98.336	98.298	98.262	98.229	98.254	98.214	9.54	95.393	95.287	95.188	95.095	95.166	95.056
9.20	98.250	98.210	98.172	98.137	98.163	98.121	9.55	95.311	95.203	95.102	95.008	95.080	94.968
9.21	98.164	98.122	98.082	98.045	98.073	98.029	9.56	95.229	95.119	95.017	94.921	94.994	94.881
9.22	98.078	98.034	97.992	97.954	97.983	97.937	9.57	95.147	95.036	94.932	94.834	94.909	94.793
9.23	97.992	97.946	97.903	97.862	97.893	97.845	9.58	95.066	94.952	94.846	94.747	94.823	94.706
9.24	97.907	97.858	97.813	97.771	97.803	97.753	9.59	94.984	94.869	94.761	94.661	94.738	94.618
9.25	97.821	97.771	97.724	97.680	97.713	97.661	9.60	94.903	94.786	94.676	94.574	94.653	94.531
9.26	97.735	97.683	97.634	97.589	97.623	97.569	9.61	94.822	94.703	94.592	94.488	94.567	94.444
9.27	97.650	97.596	97.545	97.498	97.534	97.477	9.62	94.741	94.620	94.507	94.402	94.482	94.357
9.28	97.565	97.509	97.456	97.407	97.444	97.386	9.63	94.660	94.537	94.423	94.315	94.398	94.271
9.29	97.480	97.422	97.367	97.317	97.355	97.295	9.64	94.579	94.454	94.338	94.229	94.313	94.184
9.30	97.395	97.335	97.279	97.226	97.266	97.203	9.65	94.498	94.372	94.254	94.144	94.228	94.097
9.31	97.310	97.248	97.190	97.136	97.177	97.112	9.66	94.417	94.289	94.170	94.058	94.144	94.011
9.32	97.225	97.161	97.102	97.046	97.088	97.022	9.67	94.337	94.207	94.086	93.972	94.059	93.925
9.33	97.141	97.075	97.013	96.956	96.999	96.931	9.68	94.257	94.125	94.002	93.887	93.975	93.839
9.34	97.056	96.988	96.925	96.866	96.911	96.840	9.69	94.176	94.043	93.918	93.801	93.891	93.753

TABLE 4(CONT)

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 8.50 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL PMT	GPM PLANS I	II	III	IV	V		LEVEL PMT	GPM PLANS I	II	III	IV	V
9.70	94.096	93.961	93.834	93.716	93.807	93.667	9.85	92.908	92.746	92.594	92.452	92.562	92.394
9.71	94.016	93.879	93.751	93.631	93.723	93.581	9.86	92.829	92.666	92.512	92.369	92.480	92.310
9.72	93.936	93.797	93.667	93.546	93.639	93.495	9.87	92.751	92.586	92.431	92.286	92.398	92.226
9.73	93.856	93.716	93.584	93.461	93.556	93.410	9.88	92.673	92.506	92.349	92.203	92.316	92.143
9.74	93.777	93.634	93.501	93.376	93.472	93.325	9.89	92.595	92.426	92.268	92.120	92.234	92.059
9.75	93.697	93.553	93.418	93.292	93.389	93.239	9.90	92.517	92.346	92.186	92.037	92.153	91.976
9.76	93.618	93.472	93.335	93.207	93.306	93.154	9.91	92.440	92.267	92.105	91.954	92.071	91.893
9.77	93.538	93.390	93.252	93.123	93.222	93.069	9.92	92.362	92.187	92.024	91.872	91.990	91.810
9.78	93.459	93.309	93.169	93.038	93.139	92.984	9.93	92.284	92.108	91.943	91.789	91.909	91.727
9.79	93.380	93.229	93.087	92.954	93.057	92.900	9.94	92.207	92.029	91.863	91.707	91.828	91.644
9.80	93.301	93.148	93.004	92.870	92.974	92.815	9.95	92.130	91.950	91.782	91.625	91.747	91.561
9.81	93.222	93.067	92.922	92.786	92.891	92.731	9.96	92.053	91.871	91.701	91.543	91.666	91.478
9.82	93.143	92.987	92.840	92.703	92.809	92.646	9.97	91.975	91.792	91.621	91.461	91.585	91.396
9.83	93.065	92.906	92.758	92.619	92.726	92.562	9.98	91.898	91.714	91.541	91.379	91.504	91.313
9.84	92.986	92.826	92.676	92.535	92.644	92.478	9.99	91.822	91.635	91.460	91.297	91.424	91.231

TABLE 5

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 8.75 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL	GPM PLANS						LEVEL	GPM PLANS				
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
9.25	99.999	99.999	99.999	99.999	99.999	100.000	9.60	97.016	96.946	96.880	96.819	96.866	96.794
9.26	99.912	99.910	99.908	99.906	99.908	99.906	9.61	96.933	96.861	96.794	96.731	96.779	96.705
9.27	99.825	99.821	99.817	99.813	99.816	99.812	9.62	96.850	96.776	96.707	96.642	96.692	96.616
9.28	99.737	99.731	99.726	99.720	99.724	99.718	9.63	96.767	96.691	96.620	96.554	96.605	96.527
9.29	99.650	99.642	99.635	99.628	99.633	99.625	9.64	96.684	96.607	96.534	96.466	96.519	96.438
9.30	99.564	99.553	99.544	99.535	99.542	99.531	9.65	96.602	96.522	96.448	96.378	96.432	96.350
9.31	99.477	99.465	99.453	99.442	99.451	99.438	9.66	96.519	96.438	96.362	96.290	96.346	96.261
9.32	99.390	99.376	99.363	99.350	99.360	99.345	9.67	96.437	96.354	96.276	96.203	96.259	96.173
9.33	99.304	99.287	99.272	99.258	99.269	99.252	9.68	96.355	96.269	96.190	96.115	96.173	96.085
9.34	99.217	99.199	99.182	99.166	99.178	99.159	9.69	96.273	96.186	96.104	96.028	96.087	95.997
9.35	99.131	99.111	99.092	99.074	99.088	99.066	9.70	96.191	96.102	96.018	95.940	96.001	95.909
9.36	99.045	99.023	99.002	98.982	98.997	98.974	9.71	96.109	96.018	95.933	95.853	95.915	95.821
9.37	98.959	98.935	98.912	98.890	98.907	98.881	9.72	96.027	95.934	95.847	95.766	95.829	95.733
9.38	98.873	98.847	98.822	98.799	98.817	98.789	9.73	95.946	95.851	95.762	95.679	95.744	95.646
9.39	98.787	98.759	98.732	98.707	98.727	98.697	9.74	95.864	95.767	95.677	95.592	95.658	95.558
9.40	98.702	98.671	98.643	98.616	98.637	98.605	9.75	95.783	95.684	95.592	95.506	95.573	95.471
9.41	98.616	98.584	98.554	98.525	98.547	98.513	9.76	95.701	95.601	95.507	95.419	95.488	95.384
9.42	98.531	98.497	98.464	98.434	98.457	98.422	9.77	95.620	95.518	95.422	95.333	95.402	95.297
9.43	98.446	98.409	98.375	98.343	98.368	98.330	9.78	95.539	95.435	95.338	95.247	95.318	95.210
9.44	98.361	98.322	98.286	98.253	98.278	98.239	9.79	95.458	95.352	95.253	95.160	95.233	95.123
9.45	98.276	98.235	98.197	98.162	98.189	98.147	9.80	95.378	95.270	95.169	95.074	95.148	95.036
9.46	98.191	98.148	98.109	98.072	98.100	98.056	9.81	95.297	95.187	95.085	94.988	95.063	94.950
9.47	98.106	98.062	98.020	97.981	98.011	97.965	9.82	95.216	95.105	95.000	94.903	94.979	94.863
9.48	98.021	97.975	97.932	97.891	97.922	97.874	9.83	95.136	95.023	94.916	94.817	94.894	94.777
9.49	97.937	97.889	97.843	97.801	97.834	97.783	9.84	95.056	94.940	94.832	94.731	94.810	94.691
9.50	97.853	97.802	97.755	97.711	97.745	97.693	9.85	94.976	94.858	94.749	94.646	94.726	94.605
9.51	97.768	97.716	97.667	97.621	97.657	97.602	9.86	94.895	94.776	94.665	94.561	94.642	94.519
9.52	97.684	97.630	97.579	97.532	97.568	97.512	9.87	94.816	94.695	94.581	94.476	94.558	94.433
9.53	97.600	97.544	97.491	97.442	97.480	97.422	9.88	94.736	94.613	94.498	94.391	94.475	94.348
9.54	97.516	97.458	97.404	97.353	97.392	97.332	9.89	94.656	94.531	94.415	94.306	94.391	94.262
9.55	97.432	97.372	97.316	97.263	97.304	97.242	9.90	94.576	94.450	94.332	94.221	94.307	94.177
9.56	97.349	97.287	97.229	97.174	97.216	97.152	9.91	94.497	94.369	94.249	94.136	94.224	94.092
9.57	97.265	97.201	97.141	97.085	97.129	97.062	9.92	94.417	94.287	94.166	94.052	94.141	94.006
9.58	97.182	97.116	97.054	96.996	97.041	96.973	9.93	94.338	94.206	94.083	93.967	94.058	93.921
9.59	97.099	97.031	96.967	96.908	96.954	96.883	9.94	94.259	94.125	94.000	93.883	93.975	93.837

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 8.75 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						
	LEVEL	GPM PLANS						LEVEL	GPM PLANS					
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V	
9.95	94.180	94.044	93.917	93.799	93.892	93.752	10.10	93.008	92.845	92.693	92.551	92.663	92.495	
9.96	94.101	93.964	93.835	93.715	93.809	93.667	10.11	92.930	92.766	92.612	92.469	92.582	92.413	
9.97	94.022	93.883	93.753	93.631	93.726	93.583	10.12	92.853	92.687	92.532	92.386	92.501	92.330	
9.98	93.943	93.802	93.670	93.547	93.644	93.498	10.13	92.776	92.608	92.451	92.304	92.420	92.247	
9.99	93.865	93.722	93.588	93.463	93.561	93.414	10.14	92.699	92.530	92.371	92.223	92.340	92.165	
10.00	93.786	93.642	93.506	93.380	93.479	93.330	10.15	92.623	92.451	92.291	92.141	92.259	92.083	
10.01	93.708	93.562	93.425	93.296	93.397	93.246	10.16	92.546	92.373	92.211	92.059	92.179	92.000	
10.02	93.630	93.482	93.343	93.213	93.315	93.162	10.17	92.469	92.294	92.131	91.978	92.098	91.918	
10.03	93.552	93.402	93.261	93.130	93.233	93.078	10.18	92.393	92.216	92.051	91.896	92.018	91.836	
10.04	93.474	93.322	93.180	93.047	93.151	92.995	10.19	92.316	92.138	91.971	91.815	91.938	91.755	
10.05	93.396	93.242	93.098	92.964	93.069	92.911	10.20	92.240	92.060	91.891	91.734	91.858	91.673	
10.06	93.318	93.162	93.017	92.881	92.988	92.828	10.21	92.164	91.982	91.812	91.653	91.778	91.591	
10.07	93.240	93.083	92.936	92.798	92.906	92.744	10.22	92.088	91.904	91.732	91.572	91.699	91.510	
10.08	93.163	93.004	92.855	92.716	92.825	92.661	10.23	92.012	91.827	91.653	91.491	91.619	91.429	
10.09	93.085	92.924	92.774	92.633	92.744	92.578	10.24	91.936	91.749	91.574	91.410	91.540	91.347	

TABLE 6

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 9.00 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL	GPM PLANS						LEVEL	GPM PLANS				
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
9.50	99.999	99.999	99.999	100.000	99.999	100.000	9.85	97.059	96.989	96.923	96.862	96.910	96.838
9.51	99.913	99.911	99.909	99.908	99.909	99.907	9.86	96.977	96.905	96.838	96.774	96.824	96.750
9.52	99.827	99.823	99.819	99.816	99.819	99.814	9.87	96.895	96.821	96.752	96.687	96.738	96.662
9.53	99.741	99.735	99.730	99.724	99.728	99.722	9.88	96.813	96.738	96.667	96.600	96.653	96.574
9.54	99.656	99.647	99.640	99.633	99.638	99.630	9.89	96.732	96.654	96.581	96.513	96.567	96.487
9.55	99.570	99.560	99.550	99.541	99.548	99.538	9.90	96.650	96.571	96.496	96.427	96.482	96.399
9.56	99.484	99.472	99.461	99.450	99.458	99.446	9.91	96.569	96.488	96.411	96.340	96.396	96.312
9.57	99.399	99.385	99.371	99.359	99.369	99.354	9.92	96.488	96.405	96.326	96.253	96.311	96.225
9.58	99.314	99.298	99.282	99.268	99.279	99.262	9.93	96.407	96.322	96.242	96.167	96.226	96.138
9.59	99.229	99.210	99.193	99.177	99.190	99.171	9.94	96.326	96.239	96.157	96.081	96.141	96.051
9.60	99.144	99.123	99.104	99.086	99.100	99.079	9.95	96.245	96.156	96.073	95.994	96.056	95.964
9.61	99.059	99.037	99.016	98.996	99.011	98.988	9.96	96.165	96.074	95.988	95.908	95.972	95.878
9.62	98.974	98.950	98.927	98.905	98.922	98.897	9.97	96.084	95.991	95.904	95.823	95.887	95.791
9.63	98.890	98.863	98.838	98.815	98.833	98.806	9.98	96.004	95.909	95.820	95.737	95.803	95.705
9.64	98.805	98.777	98.750	98.725	98.745	98.715	9.99	95.923	95.827	95.736	95.651	95.718	95.618
9.65	98.721	98.690	98.662	98.635	98.656	98.624	10.00	95.843	95.744	95.652	95.566	95.634	95.532
9.66	98.636	98.604	98.574	98.545	98.567	98.534	10.01	95.763	95.662	95.568	95.480	95.550	95.446
9.67	98.552	98.518	98.486	98.455	98.479	98.443	10.02	95.683	95.581	95.485	95.395	95.466	95.360
9.68	98.468	98.432	98.398	98.366	98.391	98.353	10.03	95.603	95.499	95.401	95.310	95.382	95.275
9.69	98.384	98.346	98.310	98.276	98.303	98.263	10.04	95.523	95.417	95.318	95.225	95.298	95.189
9.70	98.301	98.260	98.222	98.187	98.215	98.173	10.05	95.444	95.336	95.234	95.140	95.215	95.103
9.71	98.217	98.175	98.135	98.098	98.127	98.083	10.06	95.364	95.254	95.151	95.055	95.131	95.018
9.72	98.133	98.089	98.047	98.008	98.039	97.993	10.07	95.285	95.173	95.068	94.970	95.048	94.933
9.73	98.050	98.004	97.960	97.919	97.951	97.903	10.08	95.205	95.092	94.985	94.886	94.965	94.848
9.74	97.967	97.918	97.873	97.831	97.864	97.814	10.09	95.126	95.011	94.902	94.801	94.882	94.763
9.75	97.884	97.833	97.786	97.742	97.777	97.724	10.10	95.047	94.930	94.820	94.717	94.799	94.678
9.76	97.801	97.748	97.699	97.653	97.689	97.635	10.11	94.968	94.849	94.737	94.633	94.716	94.593
9.77	97.718	97.663	97.612	97.565	97.602	97.546	10.12	94.889	94.768	94.655	94.549	94.633	94.508
9.78	97.635	97.579	97.526	97.477	97.515	97.457	10.13	94.810	94.688	94.572	94.465	94.550	94.424
9.79	97.552	97.494	97.439	97.388	97.428	97.368	10.14	94.732	94.607	94.490	94.381	94.468	94.339
9.80	97.470	97.409	97.353	97.300	97.342	97.280	10.15	94.653	94.527	94.408	94.297	94.385	94.255
9.81	97.387	97.325	97.267	97.212	97.255	97.191	10.16	94.575	94.447	94.326	94.214	94.303	94.171
9.82	97.305	97.241	97.181	97.124	97.169	97.102	10.17	94.497	94.366	94.244	94.130	94.221	94.087
9.83	97.223	97.157	97.095	97.037	97.082	97.014	10.18	94.418	94.286	94.163	94.047	94.139	94.003
9.84	97.141	97.073	97.009	96.949	96.996	96.926	10.19	94.340	94.206	94.081	93.964	94.057	93.919

TABLE 6(CONT)

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 9.00 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL	GPM PLANS						LEVEL	GPM PLANS				
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
10.20	94.262	94.127	93.999	93.880	93.975	93.836	10.35	93.106	92.943	92.791	92.648	92.762	92.595
10.21	94.185	94.047	93.918	93.797	93.894	93.752	10.36	93.030	92.865	92.711	92.567	92.683	92.514
10.22	94.107	93.967	93.837	93.715	93.812	93.669	10.37	92.954	92.787	92.632	92.486	92.603	92.432
10.23	94.029	93.888	93.756	93.632	93.731	93.585	10.38	92.878	92.710	92.552	92.405	92.523	92.351
10.24	93.952	93.809	93.675	93.549	93.649	93.502	10.39	92.802	92.632	92.473	92.324	92.443	92.269
10.25	93.874	93.729	93.594	93.467	93.568	93.419	10.40	92.726	92.554	92.394	92.243	92.364	92.188
10.26	93.797	93.650	93.513	93.384	93.487	93.336	10.41	92.650	92.477	92.315	92.163	92.285	92.107
10.27	93.720	93.571	93.432	93.302	93.406	93.254	10.42	92.575	92.400	92.236	92.082	92.205	92.026
10.28	93.643	93.492	93.352	93.220	93.325	93.171	10.43	92.499	92.322	92.157	92.002	92.126	91.945
10.29	93.566	93.414	93.271	93.138	93.244	93.088	10.44	92.424	92.245	92.078	91.921	92.047	91.864
10.30	93.489	93.335	93.191	93.056	93.164	93.006	10.45	92.349	92.168	91.999	91.841	91.968	91.783
10.31	93.412	93.256	93.111	92.974	93.083	92.923	10.46	92.274	92.091	91.921	91.761	91.890	91.703
10.32	93.335	93.178	93.031	92.892	93.003	92.841	10.47	92.198	92.015	91.842	91.681	91.811	91.622
10.33	93.259	93.100	92.951	92.811	92.923	92.759	10.48	92.124	91.938	91.764	91.601	91.732	91.542
10.34	93.182	93.021	92.871	92.729	92.843	92.677	10.49	92.049	91.861	91.686	91.522	91.654	91.462

TABLE 7

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 9.25 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL	GPM PLANS						LEVEL	GPM PLANS				
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
9.75	99.999	99.999	99.999	100.000	99.999	100.000	10.10	97.101	97.031	96.965	96.904	96.953	96.881
9.76	99.914	99.912	99.911	99.909	99.910	99.908	10.11	97.020	96.948	96.881	96.818	96.868	96.794
9.77	99.830	99.826	99.822	99.818	99.821	99.817	10.12	96.940	96.866	96.796	96.732	96.784	96.708
9.78	99.745	99.739	99.733	99.728	99.732	99.726	10.13	96.859	96.783	96.712	96.646	96.699	96.621
9.79	99.661	99.652	99.645	99.638	99.643	99.635	10.14	96.779	96.701	96.628	96.560	96.615	96.535
9.80	99.576	99.566	99.557	99.548	99.555	99.544	10.15	96.698	96.619	96.544	96.474	96.530	96.449
9.81	99.492	99.480	99.468	99.458	99.466	99.453	10.16	96.618	96.537	96.460	96.389	96.446	96.362
9.82	99.408	99.394	99.380	99.368	99.378	99.363	10.17	96.538	96.455	96.377	96.303	96.362	96.276
9.83	99.324	99.308	99.292	99.278	99.289	99.272	10.18	96.458	96.373	96.293	96.218	96.278	96.190
9.84	99.240	99.222	99.204	99.188	99.201	99.182	10.19	96.379	96.291	96.210	96.133	96.194	96.105
9.85	99.156	99.136	99.117	99.099	99.113	99.092	10.20	96.299	96.210	96.126	96.048	96.111	96.019
9.86	99.073	99.050	99.029	99.010	99.025	99.002	10.21	96.219	96.128	96.043	95.963	96.027	95.934
9.87	98.989	98.965	98.942	98.920	98.937	98.912	10.22	96.140	96.047	95.960	95.878	95.944	95.848
9.88	98.906	98.879	98.854	98.831	98.850	98.822	10.23	96.061	95.966	95.877	95.793	95.860	95.763
9.89	98.822	98.794	98.767	98.742	98.762	98.733	10.24	95.981	95.885	95.794	95.709	95.777	95.678
9.90	98.739	98.709	98.680	98.653	98.675	98.643	10.25	95.902	95.804	95.711	95.624	95.694	95.593
9.91	98.656	98.624	98.593	98.565	98.587	98.554	10.26	95.823	95.723	95.628	95.540	95.611	95.508
9.92	98.573	98.539	98.506	98.476	98.500	98.465	10.27	95.744	95.642	95.546	95.456	95.528	95.423
9.93	98.490	98.454	98.420	98.388	98.413	98.376	10.28	95.666	95.561	95.464	95.372	95.446	95.339
9.94	98.408	98.369	98.333	98.299	98.326	98.287	10.29	95.587	95.481	95.381	95.288	95.363	95.254
9.95	98.325	98.285	98.247	98.211	98.240	98.198	10.30	95.509	95.400	95.299	95.204	95.281	95.170
9.96	98.243	98.200	98.161	98.123	98.153	98.109	10.31	95.430	95.320	95.217	95.120	95.198	95.085
9.97	98.160	98.116	98.074	98.035	98.066	98.021	10.32	95.352	95.240	95.135	95.037	95.116	95.001
9.98	98.078	98.032	97.988	97.947	97.980	97.932	10.33	95.274	95.160	95.053	94.953	95.034	94.917
9.99	97.996	97.948	97.902	97.860	97.894	97.844	10.34	95.195	95.080	94.971	94.870	94.952	94.833
10.00	97.914	97.864	97.817	97.772	97.808	97.756	10.35	95.117	95.000	94.890	94.787	94.870	94.750
10.01	97.832	97.780	97.731	97.685	97.722	97.668	10.36	95.040	94.920	94.808	94.704	94.788	94.666
10.02	97.751	97.696	97.645	97.598	97.636	97.580	10.37	94.962	94.841	94.727	94.621	94.707	94.582
10.03	97.669	97.613	97.560	97.510	97.550	97.492	10.38	94.884	94.761	94.646	94.538	94.625	94.499
10.04	97.587	97.529	97.475	97.423	97.464	97.404	10.39	94.807	94.682	94.565	94.455	94.544	94.416
10.05	97.506	97.446	97.389	97.336	97.379	97.317	10.40	94.729	94.602	94.484	94.372	94.462	94.332
10.06	97.425	97.363	97.304	97.250	97.293	97.229	10.41	94.652	94.523	94.403	94.290	94.381	94.249
10.07	97.344	97.279	97.219	97.163	97.208	97.142	10.42	94.575	94.444	94.322	94.207	94.300	94.167
10.08	97.263	97.197	97.135	97.076	97.123	97.055	10.43	94.497	94.365	94.241	94.125	94.219	94.084
10.09	97.182	97.114	97.050	96.990	97.038	96.968	10.44	94.420	94.286	94.161	94.043	94.138	94.001

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 9.25 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL PMT	GPM PLANS I	II	III	IV	V		LEVEL PMT	GPM PLANS I	II	III	IV	V
10.45	94.344	94.208	94.080	93.961	94.058	93.918	10.60	93.203	93.040	92.887	92.744	92.861	92.694
10.46	94.267	94.129	94.000	93.879	93.977	93.836	10.61	93.128	92.963	92.809	92.664	92.782	92.613
10.47	94.190	94.051	93.920	93.797	93.897	93.754	10.62	93.053	92.886	92.730	92.584	92.703	92.533
10.48	94.113	93.972	93.840	93.715	93.816	93.671	10.63	92.978	92.809	92.652	92.504	92.624	92.452
10.49	94.037	93.894	93.760	93.634	93.736	93.589	10.64	92.903	92.733	92.573	92.424	92.546	92.372
10.50	93.961	93.816	93.680	93.552	93.656	93.507	10.65	92.828	92.656	92.495	92.344	92.467	92.292
10.51	93.884	93.738	93.600	93.471	93.576	93.426	10.66	92.753	92.580	92.417	92.265	92.389	92.212
10.52	93.808	93.660	93.520	93.390	93.496	93.344	10.67	92.679	92.503	92.339	92.185	92.311	92.132
10.53	93.732	93.582	93.441	93.309	93.416	93.262	10.68	92.604	92.427	92.261	92.106	92.233	92.052
10.54	93.656	93.504	93.361	93.228	93.336	93.181	10.69	92.530	92.351	92.183	92.026	92.155	91.972
10.55	93.580	93.426	93.282	93.147	93.257	93.099	10.70	92.456	92.275	92.106	91.947	92.077	91.892
10.56	93.505	93.349	93.203	93.066	93.177	93.018	10.71	92.381	92.199	92.028	91.868	91.999	91.813
10.57	93.429	93.272	93.124	92.985	93.098	92.937	10.72	92.307	92.123	91.951	91.789	91.921	91.733
10.58	93.354	93.194	93.045	92.905	93.019	92.856	10.73	92.233	92.048	91.873	91.710	91.844	91.654
10.59	93.278	93.117	92.966	92.824	92.940	92.775	10.74	92.160	91.972	91.796	91.632	91.766	91.575

TABLE 8

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 9.50 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						
	LEVEL	GPM PLANS						LEVEL	GPM PLANS					
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
10.00	99.999	99.999	99.999	100.000	100.000	100.000	10.35	97.142	97.072	97.007	96.945	96.995	96.924
10.01	99.916	99.914	99.912	99.910	99.912	99.910	10.36	97.063	96.991	96.923	96.860	96.912	96.838
10.02	99.832	99.828	99.824	99.821	99.824	99.820	10.37	96.983	96.910	96.840	96.775	96.828	96.753
10.03	99.749	99.743	99.737	99.732	99.736	99.730	10.38	96.904	96.828	96.757	96.690	96.745	96.667
10.04	99.666	99.657	99.650	99.643	99.648	99.640	10.39	96.825	96.747	96.674	96.606	96.662	96.582
10.05	99.582	99.572	99.563	99.554	99.561	99.550	10.40	96.746	96.666	96.591	96.521	96.578	96.497
10.06	99.499	99.487	99.476	99.465	99.474	99.461	10.41	96.667	96.585	96.509	96.437	96.495	96.412
10.07	99.417	99.402	99.389	99.376	99.386	99.372	10.42	96.588	96.504	96.426	96.353	96.413	96.327
10.08	99.334	99.317	99.302	99.288	99.299	99.283	10.43	96.509	96.424	96.344	96.268	96.330	96.242
10.09	99.251	99.233	99.215	99.199	99.212	99.194	10.44	96.430	96.343	96.261	96.184	96.247	96.158
10.10	99.168	99.148	99.129	99.111	99.126	99.105	10.45	96.352	96.263	96.179	96.100	96.165	96.073
10.11	99.086	99.064	99.043	99.023	99.039	99.016	10.46	96.273	96.182	96.097	96.017	96.082	95.989
10.12	99.004	98.979	98.956	98.935	98.952	98.927	10.47	96.195	96.102	96.015	95.933	96.000	95.905
10.13	98.922	98.895	98.870	98.847	98.866	98.839	10.48	96.117	96.022	95.933	95.849	95.918	95.820
10.14	98.839	98.811	98.784	98.759	98.780	98.750	10.49	96.039	95.942	95.851	95.766	95.836	95.736
10.15	98.758	98.727	98.698	98.672	98.693	98.662	10.50	95.961	95.862	95.769	95.682	95.754	95.653
10.16	98.676	98.643	98.613	98.584	98.607	98.574	10.51	95.883	95.782	95.688	95.599	95.672	95.569
10.17	98.594	98.559	98.527	98.497	98.521	98.486	10.52	95.805	95.703	95.606	95.516	95.590	95.485
10.18	98.512	98.476	98.442	98.409	98.435	98.398	10.53	95.727	95.623	95.525	95.433	95.508	95.402
10.19	98.431	98.392	98.356	98.322	98.350	98.310	10.54	95.650	95.544	95.444	95.350	95.427	95.318
10.20	98.349	98.309	98.271	98.235	98.264	98.223	10.55	95.572	95.464	95.363	95.267	95.346	95.235
10.21	98.268	98.226	98.186	98.148	98.179	98.135	10.56	95.495	95.385	95.282	95.185	95.264	95.152
10.22	98.187	98.143	98.101	98.062	98.093	98.048	10.57	95.418	95.306	95.201	95.102	95.183	95.069
10.23	98.106	98.060	98.016	97.975	98.008	97.961	10.58	95.341	95.227	95.120	95.020	95.102	94.986
10.24	98.025	97.977	97.931	97.889	97.923	97.873	10.59	95.264	95.148	95.039	94.938	95.021	94.903
10.25	97.944	97.894	97.847	97.802	97.838	97.786	10.60	95.187	95.069	94.959	94.855	94.940	94.820
10.26	97.864	97.811	97.762	97.716	97.753	97.700	10.61	95.110	94.991	94.878	94.773	94.860	94.738
10.27	97.783	97.729	97.678	97.630	97.669	97.613	10.62	95.033	94.912	94.798	94.691	94.779	94.655
10.28	97.703	97.646	97.593	97.544	97.584	97.526	10.63	94.957	94.834	94.718	94.610	94.699	94.573
10.29	97.622	97.564	97.509	97.458	97.500	97.440	10.64	94.880	94.755	94.638	94.528	94.618	94.491
10.30	97.542	97.482	97.425	97.372	97.415	97.353	10.65	94.804	94.677	94.558	94.446	94.538	94.409
10.31	97.462	97.400	97.341	97.286	97.331	97.267	10.66	94.727	94.599	94.478	94.365	94.458	94.327
10.32	97.382	97.318	97.257	97.201	97.247	97.181	10.67	94.651	94.521	94.398	94.284	94.378	94.245
10.33	97.302	97.236	97.174	97.116	97.163	97.095	10.68	94.575	94.443	94.319	94.202	94.298	94.163
10.34	97.222	97.154	97.090	97.030	97.079	97.009	10.69	94.499	94.365	94.239	94.121	94.218	94.082

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 9.50 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						
	LEVEL	GPM PLANS						LEVEL	GPM PLANS					
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V	
10.70	94.423	94.287	94.160	94.040	94.139	94.000	10.85	93.298	93.135	92.982	92.839	92.957	92.791	
10.71	94.348	94.210	94.081	93.959	94.059	93.919	10.86	93.224	93.059	92.904	92.759	92.880	92.712	
10.72	94.272	94.132	94.001	93.879	93.980	93.837	10.87	93.150	92.983	92.827	92.680	92.802	92.632	
10.73	94.196	94.055	93.922	93.798	93.901	93.756	10.88	93.076	92.908	92.750	92.601	92.724	92.553	
10.74	94.121	93.978	93.843	93.717	93.821	93.675	10.89	93.002	92.832	92.672	92.523	92.647	92.473	
10.75	94.046	93.901	93.765	93.637	93.742	93.594	10.90	92.928	92.756	92.595	92.444	92.569	92.394	
10.76	93.970	93.824	93.686	93.557	93.663	93.513	10.91	92.855	92.681	92.518	92.365	92.492	92.315	
10.77	93.895	93.747	93.607	93.476	93.584	93.433	10.92	92.781	92.606	92.441	92.287	92.415	92.236	
10.78	93.820	93.670	93.529	93.396	93.506	93.352	10.93	92.708	92.530	92.364	92.208	92.338	92.157	
10.79	93.745	93.593	93.450	93.316	93.427	93.272	10.94	92.634	92.455	92.287	92.130	92.261	92.078	
10.80	93.671	93.517	93.372	93.236	93.348	93.191	10.95	92.561	92.380	92.211	92.052	92.184	92.000	
10.81	93.596	93.440	93.294	93.157	93.270	93.111	10.96	92.488	92.305	92.134	91.974	92.107	91.921	
10.82	93.521	93.364	93.216	93.077	93.192	93.031	10.97	92.415	92.230	92.058	91.896	92.030	91.843	
10.83	93.447	93.287	93.138	92.997	93.114	92.951	10.98	92.342	92.156	91.981	91.818	91.954	91.765	
10.84	93.372	93.211	93.060	92.918	93.035	92.871	10.99	92.269	92.081	91.905	91.740	91.877	91.686	

TABLE 9

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 9.75 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL PMT	GPM PLANS I	II	III	IV	V		LEVEL PMT	GPM PLANS I	II	III	IV	V
10.25	99.999	99.999	100.000	100.000	100.000	100.000	10.60	97.183	97.113	97.048	96.986	97.037	96.966
10.26	99.917	99.915	99.913	99.911	99.913	99.911	10.61	97.105	97.033	96.965	96.902	96.955	96.881
10.27	99.835	99.831	99.827	99.823	99.826	99.822	10.62	97.027	96.953	96.883	96.818	96.872	96.797
10.28	99.752	99.746	99.741	99.735	99.740	99.733	10.63	96.948	96.873	96.801	96.735	96.790	96.713
10.29	99.670	99.662	99.655	99.647	99.653	99.645	10.64	96.870	96.793	96.720	96.651	96.708	96.628
10.30	99.589	99.578	99.569	99.560	99.567	99.557	10.65	96.792	96.713	96.638	96.568	96.626	96.545
10.31	99.507	99.494	99.483	99.472	99.481	99.469	10.66	96.714	96.633	96.556	96.484	96.544	96.461
10.32	99.425	99.411	99.397	99.385	99.395	99.380	10.67	96.637	96.553	96.475	96.401	96.462	96.377
10.33	99.343	99.327	99.312	99.297	99.309	99.292	10.68	96.559	96.473	96.393	96.318	96.380	96.293
10.34	99.262	99.244	99.226	99.210	99.223	99.205	10.69	96.481	96.394	96.312	96.235	96.299	96.210
10.35	99.181	99.160	99.141	99.123	99.138	99.117	10.70	96.404	96.315	96.231	96.152	96.217	96.126
10.36	99.099	99.077	99.056	99.036	99.052	99.029	10.71	96.327	96.235	96.150	96.069	96.136	96.043
10.37	99.018	98.994	98.971	98.949	98.967	98.942	10.72	96.249	96.156	96.069	95.987	96.055	95.960
10.38	98.937	98.911	98.886	98.863	98.882	98.855	10.73	96.172	96.077	95.988	95.904	95.974	95.877
10.39	98.856	98.828	98.801	98.776	98.797	98.768	10.74	96.095	95.998	95.907	95.822	95.893	95.794
10.40	98.775	98.745	98.716	98.690	98.712	98.680	10.75	96.018	95.919	95.827	95.740	95.812	95.711
10.41	98.695	98.662	98.632	98.603	98.627	98.594	10.76	95.941	95.841	95.746	95.657	95.731	95.629
10.42	98.614	98.580	98.547	98.517	98.542	98.507	10.77	95.865	95.762	95.666	95.575	95.651	95.546
10.43	98.534	98.497	98.463	98.431	98.457	98.420	10.78	95.788	95.684	95.586	95.493	95.570	95.464
10.44	98.453	98.415	98.379	98.345	98.373	98.334	10.79	95.712	95.605	95.505	95.412	95.490	95.381
10.45	98.373	98.333	98.295	98.259	98.288	98.247	10.80	95.635	95.527	95.425	95.330	95.410	95.299
10.46	98.293	98.251	98.211	98.173	98.204	98.161	10.81	95.559	95.449	95.345	95.248	95.329	95.217
10.47	98.213	98.169	98.127	98.088	98.120	98.075	10.82	95.483	95.371	95.266	95.167	95.249	95.135
10.48	98.133	98.087	98.043	98.002	98.036	97.989	10.83	95.407	95.293	95.186	95.086	95.169	95.053
10.49	98.053	98.005	97.960	97.917	97.952	97.903	10.84	95.331	95.215	95.106	95.004	95.090	94.972
10.50	97.974	97.923	97.876	97.832	97.868	97.817	10.85	95.255	95.137	95.027	94.923	95.010	94.890
10.51	97.894	97.842	97.793	97.747	97.785	97.731	10.86	95.179	95.060	94.948	94.842	94.930	94.809
10.52	97.815	97.761	97.709	97.662	97.701	97.646	10.87	95.103	94.982	94.868	94.761	94.851	94.727
10.53	97.736	97.679	97.626	97.577	97.618	97.560	10.88	95.028	94.905	94.789	94.681	94.771	94.646
10.54	97.656	97.598	97.543	97.492	97.534	97.475	10.89	94.952	94.827	94.710	94.600	94.692	94.565
10.55	97.577	97.517	97.460	97.407	97.451	97.390	10.90	94.877	94.750	94.631	94.519	94.613	94.484
10.56	97.498	97.436	97.378	97.323	97.368	97.305	10.91	94.802	94.673	94.552	94.439	94.534	94.403
10.57	97.419	97.355	97.295	97.238	97.285	97.220	10.92	94.727	94.596	94.474	94.359	94.455	94.322
10.58	97.341	97.274	97.212	97.154	97.202	97.135	10.93	94.652	94.519	94.395	94.278	94.376	94.241
10.59	97.262	97.194	97.130	97.070	97.120	97.050	10.94	94.577	94.443	94.317	94.198	94.297	94.161

TABLE 9(CONT)

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 9.75 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT							NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL	GPM PLANS						LEVEL	GPM PLANS				
APR	PMT	I	II	III	IV	V	APR	PMT	I	II	III	IV	V
10.95	94.502	94.366	94.238	94.118	94.219	94.080	11.10	93.392	93.229	93.076	92.932	93.053	92.887
10.96	94.427	94.289	94.160	94.038	94.140	94.000	11.11	93.319	93.154	92.999	92.854	92.976	92.809
10.97	94.353	94.213	94.082	93.959	94.062	93.920	11.12	93.246	93.079	92.922	92.776	92.899	92.730
10.98	94.278	94.137	94.004	93.879	93.984	93.840	11.13	93.173	93.004	92.846	92.698	92.823	92.652
10.99	94.204	94.060	93.926	93.799	93.905	93.760	11.14	93.100	92.930	92.770	92.620	92.746	92.573
11.00	94.129	93.984	93.848	93.720	93.827	93.680	11.15	93.027	92.855	92.693	92.542	92.670	92.495
11.01	94.055	93.908	93.770	93.641	93.749	93.600	11.16	92.954	92.781	92.617	92.464	92.593	92.417
11.02	93.981	93.832	93.693	93.562	93.672	93.521	11.17	92.882	92.706	92.541	92.387	92.517	92.339
11.03	93.907	93.757	93.615	93.482	93.594	93.441	11.18	92.809	92.632	92.465	92.309	92.441	92.261
11.04	93.833	93.681	93.538	93.403	93.516	93.362	11.19	92.737	92.558	92.390	92.232	92.365	92.183
11.05	93.759	93.605	93.460	93.325	93.439	93.282	11.20	92.664	92.484	92.314	92.155	92.289	92.106
11.06	93.686	93.530	93.383	93.246	93.361	93.203	11.21	92.592	92.410	92.238	92.077	92.213	92.028
11.07	93.612	93.454	93.306	93.167	93.284	93.124	11.22	92.520	92.336	92.163	92.000	92.138	91.951
11.08	93.539	93.379	93.229	93.089	93.207	93.045	11.23	92.448	92.262	92.087	91.923	92.062	91.873
11.09	93.465	93.304	93.152	93.010	93.130	92.966	11.24	92.376	92.188	92.012	91.847	91.987	91.796

TABLE 10

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 10.00 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL PMT	GPM PLANS I	II	III	IV	V		LEVEL PMT	GPM PLANS I	II	III	IV	V
10.50	99.999	99.999	100.000	100.000	100.000	100.000	10.85	97.224	97.154	97.088	97.026	97.078	97.007
10.51	99.918	99.916	99.914	99.913	99.914	99.912	10.86	97.146	97.074	97.007	96.943	96.997	96.924
10.52	99.837	99.833	99.829	99.826	99.829	99.825	10.87	97.069	96.995	96.926	96.861	96.915	96.840
10.53	99.756	99.750	99.744	99.739	99.743	99.737	10.88	96.992	96.916	96.845	96.778	96.834	96.757
10.54	99.675	99.667	99.659	99.652	99.658	99.650	10.89	96.915	96.837	96.764	96.695	96.753	96.674
10.55	99.594	99.584	99.575	99.566	99.573	99.563	10.90	96.838	96.758	96.683	96.613	96.672	96.591
10.56	99.514	99.502	99.490	99.479	99.488	99.476	10.91	96.761	96.680	96.603	96.531	96.592	96.509
10.57	99.433	99.419	99.406	99.393	99.404	99.389	10.92	96.684	96.601	96.522	96.449	96.511	96.426
10.58	99.353	99.337	99.321	99.307	99.319	99.302	10.93	96.608	96.522	96.442	96.367	96.430	96.344
10.59	99.273	99.254	99.237	99.221	99.234	99.216	10.94	96.531	96.444	96.362	96.285	96.350	96.261
10.60	99.192	99.172	99.153	99.135	99.150	99.129	10.95	96.455	96.366	96.282	96.203	96.270	96.179
10.61	99.112	99.090	99.069	99.049	99.066	99.043	10.96	96.379	96.288	96.202	96.121	96.189	96.097
10.62	99.032	99.008	98.985	98.963	98.981	98.957	10.97	96.303	96.210	96.122	96.040	96.109	96.015
10.63	98.953	98.926	98.901	98.878	98.897	98.870	10.98	96.226	96.132	96.042	95.958	96.029	95.933
10.64	98.873	98.844	98.818	98.792	98.813	98.784	10.99	96.151	96.054	95.963	95.877	95.949	95.851
10.65	98.793	98.763	98.734	98.707	98.730	98.699	11.00	96.075	95.976	95.883	95.796	95.870	95.769
10.66	98.714	98.681	98.651	98.622	98.646	98.613	11.01	95.999	95.898	95.804	95.715	95.790	95.688
10.67	98.634	98.600	98.567	98.537	98.562	98.527	11.02	95.923	95.821	95.724	95.634	95.710	95.606
10.68	98.555	98.518	98.484	98.452	98.479	98.442	11.03	95.848	95.743	95.645	95.553	95.631	95.525
10.69	98.476	98.437	98.401	98.367	98.396	98.356	11.04	95.772	95.666	95.566	95.472	95.552	95.444
10.70	98.397	98.356	98.318	98.282	98.312	98.271	11.05	95.697	95.589	95.487	95.392	95.472	95.363
10.71	98.318	98.275	98.235	98.198	98.229	98.186	11.06	95.622	95.512	95.408	95.311	95.393	95.282
10.72	98.239	98.194	98.153	98.113	98.146	98.101	11.07	95.547	95.435	95.329	95.231	95.314	95.201
10.73	98.160	98.114	98.070	98.029	98.063	98.016	11.08	95.472	95.358	95.251	95.150	95.235	95.120
10.74	98.081	98.033	97.988	97.945	97.981	97.931	11.09	95.397	95.281	95.172	95.070	95.157	95.039
10.75	98.003	97.953	97.905	97.861	97.898	97.847	11.10	95.322	95.204	95.094	94.990	95.078	94.959
10.76	97.924	97.872	97.823	97.777	97.815	97.762	11.11	95.247	95.128	95.015	94.910	95.000	94.878
10.77	97.846	97.792	97.741	97.693	97.733	97.678	11.12	95.172	95.051	94.937	94.830	94.921	94.798
10.78	97.768	97.712	97.659	97.609	97.651	97.594	11.13	95.098	94.975	94.859	94.750	94.843	94.718
10.79	97.690	97.632	97.577	97.525	97.569	97.509	11.14	95.024	94.899	94.781	94.671	94.765	94.638
10.80	97.612	97.552	97.495	97.442	97.487	97.425	11.15	94.949	94.822	94.703	94.591	94.686	94.558
10.81	97.534	97.472	97.413	97.358	97.405	97.341	11.16	94.875	94.746	94.625	94.512	94.608	94.478
10.82	97.456	97.392	97.332	97.275	97.323	97.258	11.17	94.801	94.670	94.548	94.433	94.531	94.398
10.83	97.379	97.313	97.250	97.192	97.241	97.174	11.18	94.727	94.595	94.470	94.353	94.453	94.319
10.84	97.301	97.233	97.169	97.109	97.160	97.090	11.19	94.653	94.519	94.393	94.274	94.375	94.239

TABLE10(CONT)

ANNUAL PERCENTAGE RATES INCLUDING MORTGAGE INSURANCE PREMIUMS
FOR FHA INSURED LEVEL PAYMENT AND GPM AMORTIZATION PLANS
WITH A CONTRACT RATE OF 10.00 PERCENT, .5 PERCENT INSURANCE PREMIUM AND 30 - YEAR TERM

APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT						APR	NET PROCEEDS PER HUNDRED DOLLARS OF FACE AMOUNT					
	LEVEL PMT	GPM PLANS I	II	III	IV	V		LEVEL PMT	GPM PLANS I	II	III	IV	V
11.20	94.579	94.443	94.315	94.195	94.297	94.160	11.35	93.484	93.321	93.168	93.024	93.147	92.982
11.21	94.505	94.368	94.238	94.116	94.220	94.080	11.36	93.412	93.247	93.092	92.946	93.071	92.904
11.22	94.432	94.292	94.161	94.038	94.143	94.001	11.37	93.340	93.173	93.016	92.869	92.995	92.827
11.23	94.358	94.217	94.084	93.959	94.065	93.922	11.38	93.268	93.099	92.941	92.792	92.920	92.749
11.24	94.285	94.142	94.007	93.880	93.988	93.843	11.39	93.196	93.026	92.866	92.715	92.844	92.672
11.25	94.212	94.067	93.930	93.802	93.911	93.764	11.40	93.124	92.952	92.790	92.638	92.769	92.595
11.26	94.138	93.992	93.853	93.724	93.834	93.686	11.41	93.052	92.879	92.715	92.562	92.693	92.518
11.27	94.065	93.917	93.777	93.645	93.758	93.607	11.42	92.981	92.805	92.640	92.485	92.618	92.441
11.28	93.992	93.842	93.700	93.567	93.681	93.528	11.43	92.909	92.732	92.565	92.409	92.543	92.364
11.29	93.919	93.767	93.624	93.489	93.604	93.450	11.44	92.838	92.659	92.490	92.332	92.468	92.287
11.30	93.847	93.693	93.548	93.411	93.528	93.372	11.45	92.766	92.586	92.416	92.256	92.393	92.210
11.31	93.774	93.618	93.471	93.334	93.451	93.294	11.46	92.695	92.513	92.341	92.180	92.318	92.134
11.32	93.701	93.544	93.395	93.256	93.375	93.215	11.47	92.624	92.440	92.266	92.104	92.243	92.057
11.33	93.629	93.469	93.319	93.178	93.299	93.138	11.48	92.553	92.367	92.192	92.028	92.169	91.981
11.34	93.556	93.395	93.243	93.101	93.223	93.060	11.49	92.482	92.294	92.118	91.952	92.094	91.905

@BRKPT PRINT$

[FR Doc. 78-26173 Filed 9-18-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 123]

DISASTER LOANS

Procedure for Requesting Disaster Declarations and Time Limit for Request

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: SBA issued a regulation § 123.1(a) on March 31, 1977 (42 FR 17102), setting forth the criteria for an SBA disaster declaration. However, the procedure to be followed in requesting a declaration was not included. The procedure as set forth in this rule would be the same as has been followed except that a time limitation of 60 days after the occurence of the disaster in which the request will be accepted is included. Although requests for drought declarations must be submitted within 60 days of the occurrence of the drought, loans will not be processed for partial losses until the harvesting of the affected crop is completed in order that damage assessments will be accurate. Total losses will be processed when a disaster is declared.

DATE: Comments should be forwarded by November 20, 1978.

ADDRESS: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Richard L. Wray, Financial Analyst, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, 202-653-6470.

SUPPLEMENTARY INFORMATION: SBA's statutory authority for making physical disaster loans is limited to repair and replacement of the damaged property and certain limited refinancing. See 42 U.S.C. 4451(a) (2) and (3). Delays in seeking a declaration based on a physical disaster deny victims of a disaster the speedy financial assistance intended by the program and also result in difficulty in determining the actual damage suffered for which SBA assistance may be available. This difficulty ensues because of repairs which may have been made, removal of damaged and destroyed property, and postdisaster damage which is not eligible for SBA assistance. These factors make it difficult for both the disaster victim and SBA to determine the legal amount of a loan. The agency has determined that a 60-day period from the occurrence of a disaster provides sufficient time for State authorities to survey the damage and request needed assistance from SBA, while the effects of the disaster will still be evident for loss verification by the SBA. In practice, most requests are presently received within 2 or 3 weeks of the disaster and the amendment will affect very few requests. The Administrator retains authority to make an exception to the 60-day requirement but does not expect to exercise it except in most unusual circumstances to avoid undue hardship to disaster victims. This regulation would also state the procedure which will continue to be followed in forwarding the request for a disaster declaration from the Governor of a State to the Administrator of SBA for decision. SBA has carefully considered the impact of the proposed regulation limiting the time within which SBA disasters may be requested. By insuring that early efforts are made to have a disaster declared, victims are more apt to receive assistance soon after the disaster when it is needed most rather than after months of delay. This will also help to prevent claims for nonrelated damage which cannot be covered by an SBA loan. No changes are being made in the criteria which must be met before SBA declares a disaster nor is any additional information being required from the Governors than is presently submitted with their requests. The proposed regulation will simply serve to advise the public of the necessity for determining the extent of damage and whether it meets SBA's disaster declaration criteria while the damage is ascertainable and help may be most urgently needed. If no request for a declaration is received, no disaster assistance is available from SBA either for physical or economic injury. In proposing this regulation, SBA recognizes that determining when a drought has reached sufficient proportions to constitute a disaster is a real problem. We have considered defining the occurrence to be when the moisture level in the soil reaches minus 2.5, the measurement used by the Presidential Drought Committee in 1977; we have considered using the dates during which it can be established that irreversible damage has been done to the growing crop and after which no amount of moisture will restore the crop; we have considered making no declarations until the normal harvest season is over so that the actual damage in the drought-stricken area can be ascertained along with the damage suffered by individual farmers. However, we believe that early determinations may be helpful to farmers in planning for remedial measures they may take and in arranging needed financing but the later the declaration is made, the more accurate damage assessments can be. We also recognize that Farmers Home Administration assistance on an individual basis is available and that SBA assistance may not be necessary by harvest season.

SBA is requesting comments on the alternatives suggested above or other factors which can be used in finalizing this regulation.

SBA intends, in those cases in which a disaster occurs over a period of several days, to use the first date to determine the interest rate for that disaster and the last date as the date on which the 60-day period for requesting a declaration begins to run.

The proposed regulation would have no effect on procedures utilized by the Federal Disaster Assistance Administration or the Department of Agriculture or SBA's operations in response to major or agricultural disasters.

The proposed regulation would also formalize existing instructions that applications for loans for partial crop losses will not be processed or approved until after the normal harvest season for that crop. Total losses will be processed will be processed as at present upon declaration of a disaster area. This makes SBA procedure comparable to procedures established by Farmers Home Adminstration (FmHA) and allows SBA to process a loan for the actual damage incurred rather than an estimated loss and eliminates paperwork for both the applicant and SBA. SBA disaster declarations will allow for the time between the incident date and the normal harvest date so that no eligible applicants will be denied the opportunity to apply for a loan.

SBA has determined that no ecomomic impact statement is required since these proposed regulations formalize existing procedures.

SBA will continue to evaluate the changes proposed and implemented to determine their effect on disaster loan recipients and make such changes as will promote efficiency in the delivery of program benefits.

Pursuant to the authority of sections 5(b)(6) (15 U.S.C. 634(b)) and 7(b)(1) (15 U.S.C. 636(b)) of the Small Business Act, as amended, part 123 of chapter I, title 13 of the Code of Federal Regulations would be amended as follows:

1. Section 123.1(a) would be amended by adding a new paragraph (3) as follows:

§ 123.1 General.

(a) *Disaster loan authority.* * * *

(3) When the Governor of a State desires SBA to issue a disaster declaration with respect to a physical disaster in that State, such request with supporting documentation shall be sent to

the SBA Regional Office having jurisdiction over that State within 60 days of the occurrence of the disaster. The Regional Office will evaluate the request and forward it, with a recommendation for decline or approval to the Associate Administrator for Operations, who will forward it to the Administrator with a recommendation for approval or decline. The Administrator will take final action and if the request is approved, publish a notice of disaster declaration in the FEDERAL REGISTER. The Administrator may in case of undue hardship extend the filing time for requests.

2. Section 123.2(a)(2)(i) would be amended by adding a sentence to the existing paragraph so that the paragraph as amended would read as follows:

§ 123.2 Eligibility.

(a) * * *

(2) * * *

(i) Assistance may be extended for full or partial farm product losses (crop losses or dead livestock) which have been suffered as a result of a physical disaster. However, no loans will be approved for partial crop losses until the normal harvest season has passed in order that the actual loss will have been ascertained.

* * * * *

(Catalog of Federal Domestic Assistance 59.008, Physical Disaster Loans.)

Dated: September 12, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-26287 Filed 9-18-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 781 0013]

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, LOCAL UNION 959

Extension of Time

AGENCY: Federal Trade Commission.

ACTION: Comment period extended for 61 days.

SUMMARY: The period of time for filing comments on the consent agreement has been extended for 61 days to November 15, 1978.

DATES: Comments must be received on or before November 15, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

William C. Erxleben, Director, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-4655.

SUPPLEMENTARY INFORMATION: The consent agreement and analysis to aid public comment were published in the FEDERAL REGISTER on Wednesday, July 19, 1978, 43 FR 31022.

By letter dated September 1, 1978, the National Labor Relations Board has requested the Commission to extend the comment period to November 15, 1978, in order to facilitate filing of comments by the Board. Accordingly, notice is hereby given that the Commission has extended the comment period for an additional 61 days to and including November 15, 1978.

By direction of the Commission dated September 13, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-26349 Filed 9-18-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Reg. No. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Old-Age, Disability, Dependents' and Survivors' Insurance Benefits

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to Recodify Regulations.

SUMMARY: The Social Security Administration is planning to recodify into one subpart, its current regulations on the requirements for social security benefits under Title II of the Social Security Act. These regulations describe what is required to qualify for benefits, what the benefit rates are, when a person's right to benefits begins and ends, and how family relationship determinations are made. The recodified regulation will accomplish the following goals:

(1) Provide rules in one subpart that are clearer, simpler, and meet the Department's "Operation Common Sense" standards.

(2) Reflect in the regulations two changes in the program which have resulted from court decisions. One of these changes is that children born out of wedlock who have the right to inherit their parent's property under the inheritence laws of the State where the worker has permanent residence are assumed to meet the dependency requirement for child's benefits. The other change is that the divorced husband of a worker may receive husband's benefits.

(3) Include in the regulations to provisions of the Social Security Amendments of 1977. One of these provisions, effective for months after December 1978, permits widows and widowers who remarry at age 60 or later to continue to receive their full widow's or widower's benefit. The other provision also effective for months after December 1978, reduces from 20 years to 10 years, the time a divorced spouse must have been married to the worker to qualify for wife's, husband's, or widow's benefits.

This recodified regulation will affect Subparts D and L of 20 CFR Part 404. The Department has classified the recodified regulation as policy significant.

FOR FURTHER INFORMATION CONTACT:

Ray Worley, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 20235, telephone: 301-594-5744.

Date: July 26, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

[FR Doc. 78-26263 Filed 9-18-78; 8:45 am]

[1505-01]

Food and Drug Administration

[21 CFR Part 73]

[Docket No. 77C-0208]

LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Ferric Ammonium Ferrocyanide

Correction

In FR Doc. 78-22657 appearing at page 36110 in the issue for Tuesday, August 15, 1978, in the fifth line of the "Summary" paragraph, change "cobait" to read "cobalt", and in the first column of page 36111, three lines from the bottom of the first full paragraph, change "cobait" to "cobalt".

[1505-01]

[21 CFR Part 347]

[Docket No. 78N-0021]

SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Establishment of a Monograph; Notice of Proposed Rulemaking

Correction

In FR Doc. 78-21164 appearing at page 34628 in the issue for Friday, August 4, 1978, make the following corrections:

(1) On page 34632, in the first column, in paragraph "c.", in the first line, "petition" should be corrected to read "partition".

(2) Also on page 34632, in the first column, under the heading "III. SKIN PROTECTANTS, A. GENERAL COMMENTS", in the first paragraph, in the first line, insert the word "very" after the word "their".

(3) On page 34632, in the third column, in the second paragraph in the discussion of "a. *Allantoin.*", in the third line, the word "prisma" should be "prisms".

(4) On page 34636, in the first column, in the first full paragraph, in the 8th line, insert "glove" immediately before the word "powders".

(5) Also on page 34636, in the middle column, in the list of references, the citation "OTC Volume 060137" should be preceded by the number "(3)".

(6) On page 34637 in the middle column, in the first full paragraph, in the 17th line from the bottom of the paragraph, "urination of defecation" should read "urination or defecation".

(7) On page 34640, in the middle column, in the 5th paragraph, in the 6th line, insert "sodium" immediately before bicarbonate".

(8) On page 34642, in the first column, under "CATEGORY I LABELING", in paragraph (6), in the fourth line, the word "and" should be "any".

(9) On page 34643, in the third column, in the first full paragraph, in the third line from the bottom of the paragraph, insert "such" immediately before "as".

(10) On page 34644, in the middle column, in the third line from the top, "coalgulum" should be corrected to read "coagulum".

(11) Also on page 34644, in the middle column, in the fourth line from the top, the word "benefical" should be "beneficial".

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-4361]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for Orange County, Calif.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 35492 of the FEDERAL REGISTER of August 10, 1978, on proposed flood elevation determinations for Orange County, Calif.

EFFECTIVE DATE: August 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

The following correction is made:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
(Lower) Santiago Creek.	Southern Pacific RR—25 ft**.	278

**Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: August 31, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-26154 Filed 9-18-78; 8:45 am]

[4310-05]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Chapter VII]

Public Briefing on Proposed Permanent Program Regulations

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Information briefing on proposed permanent program regulations.

SUMMARY: The Office of Surface Mining announces that it will hold a public information briefing to highlight sections of the proposed permanent program regulations and answer questions concerning their format and the procedures which will be followed during and subsequent to the public comment period on the proposed rules.

DATE: September 22, 1978.

ADDRESS: The public information briefing will be held in the Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Patricia Foulk, Public Affairs Office, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240; 202-343-4719.

SUPPLEMENTARY INFORMATION: The Office of Surface Mining will hold a public information briefing between the hours of 10 and 12 noon on Friday, September 22, 1978. The purpose of this public briefing is to highlight provisions in the proposed permanent program regulations, published in the FEDERAL REGISTER on September 18, 1978, and respond to questions which members of the audience may have concerning the format of the regulations and the procedures to be followed during the public comment period and preparation of the final regulations. Members of the press and all interested individuals are invited to attend. Walter N. Heine, P.E., Director, Office of Surface Mining, and members of his staff will be present to conduct the information briefing and respond to questions. A court reporter will be present to prepare a verbatim transcript of the briefing session for use by the Office in preparing final regulations.

This meeting is intended to assist interested members of the public at an early stage in the public comment period to understand the major concepts and the structural format of the proposed permanent program regulations. The Office hopes that as a result of this public briefing the public will be better able to understand and comment during the public comment period on the proposed permanent program regulations.

Dated: September 15, 1978.

PAUL L. REEVES,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 78-26462 Filed 9-18-78; 10:05 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 970-2]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Proposed Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing approval of two requests from the State of New Jersey to revise its air quality implementation plan. One request will be to incorporate into the implementation plan changes made by the State to its regulation, "Sulfur in Coal." The other request will be to incorporate into the implementation plan a Consent Judgment that requires that the Atlantic City Electric Co.'s Units No. 1 and No. 2 at its B.L. England Generating Station comply with the States applicable particulate emission requirements by 1981. With one exception, the changes in the State's sulfur-in-coal regulation only serve to reorganize and clarify the provisions of the regulation. The only substantive change made by the State has the effect of allowing an increase in the sulfur content of coal burned at the Atlantic City Electric Co. B.L. England Generating Station, Units 1 and 2, located in Cape May County.

DATES: Comments must be received on or before October 19, 1978.

ADDRESS: All comments should be addressed to: Eckardt C. Beck, Regional Administrator, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007.

Copies of the proposal are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region II Office, Air Programs Branch, Room 908, 26 Federal Plaza, New York, N.Y. 10007.

U.S. Environmental Protection Agency, Central Docket Section, Room 2903 B Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

New Jersey Department of Environmental Protection, John Fitch Plaza; P.O. Box 2807, Trenton, N.J. 08625.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007, 212-264-2517.

SUPPLEMENTAL INFORMATION: On July 6, 1978 the State of New Jersey submitted to the Environmental Protection Agency (EPA) two proposed revisions to its State Implementation Plan (SIP). The State requested that certain changes it made to its regulation, N.J.A.C. 7:27-10.1 et seq., "Sulfur in Coal," and a Consent Judgment by which Units 1 and 2 of the Atlantic City Electric Co.'s B.L. England Generating Station would be required to comply with the State's applicable particulate emission requirements by 1981 be approved by IPA for incorporation into the SIP. A public hearing had been held on these two revisions by New Jersey on April 21, 1978.

With one exception, all of the changes to the New Jersey regulation made by the State only serve to reorganize and clarify its provisions. The one substantive change to the regulation appears at subsection 10.2(d) and concerns the sulfur content of bituminous coal which may be used in Atlantic, Cape May, Cumberland, and Ocean Counties, N.J. in steam or electric power generating facilities.

Bituminous coal burning facilities in this area of the State were limited to the use of coal with a maximum sulfur content by weight of 1.5 percent, as prescribed in subsection 10.2(c) of the previous regulation. However, existing steam or electric power facilities in this area may now be authorized by the New Jersey Department of Environmental Protection (NJDEP) to use, for a period not exceeding 5 years, bituminous coal with a maximum sulfur content of 3.5 percent, by weight. Such authorization is based on the following conditions which appear in subsection 10.2(d):

1. The person responsible for the use of bituminous coal demonstrates that bituminous coal, containing 1 percent sulfur or less by weight and suitable for use in the specific steam or electric power generating facility, is not reasonably available in sufficient quantities; and

2. Sulfur dioxide levels in the ambient atmosphere will at no time exceed or jeopardize the ambient air quality standards set forth in subchapter 13 of this chapter; and

3. The sulfur content of the coal burned by the facility represents the minimum sulfur content coal which can be used by the facility and is reasonably available in sufficient quantity; and

4. The person responsible for the use of bituminous coal agrees to such monitoring and reporting requirements as the Department may deem appropriate to insure compliance with the conditions set forth in this subsection; and

5. The person responsible for the use of bituminous coal submits to the Department for such authorization an application which considers and addresses as a minimum, in addition to the above, the following criteria:

i. Physical surroundings of the coal fired steam or electric power generating facility;

ii. Population density of the surrounding area;

iii. Dispersion characteristics of the source;

iv. Topography of the immediate vicinity;

v. Esthetic or nuisance effects.

The effect of this change will be to allow the Atlantic City Electric Co. to use 3.5 percent sulfur content bituminous coal at its B.L. England powerplant, units 1 and 2. This plant is located at Beesley's Point in Cape May County, N.J., an area which is currently attaining primary and secondary ambient air quality standards for both sulfur dioxide and particulate matter.

As a part of its implementation plan revision request, New Jersey submitted to EPA a study done to evaluate the effects on ambient air quality of the proposed changes to "Sulfur in Coal." Based on EPA's review of this report and other technical material provided by the State, EPA has determined that the proposed revision, to "Sulfur in Coal," if approved, will not result in the contravention of any applicable ambient air quality standard.

The Consent Judgment between the Atlantic City Electric Co., and NJDEP which involves a joint enforcement effort by NJDEP and EPA provides compliance schedules for particulate emissions from Units 1 and 2 at the B.L. England Generating Station. These compliance schedules require the company to issue purchase orders for control equipment for particulate emissions by September 1978 and ultimately to comply with applicable particulate emission requirements by 1981. At the time of the July 6, 1978 submittal the Consent Judgment had not been finally approved, but on August 7, 1978 the State submitted a copy of the fully executed Judgment.

EPA finds the compliance schedules in Consent Judgment to be approvable but points out that they are summary in nature. The specific detailed substance of these schedules is provided in the following three references which are available along with the copies of the proposal for public inspection:

1. Letter dated December 6, 1977 from J. L. Jacobs, Atlantic City Electric Co., to H. Wortreich, NJDEP.

2. Detailed compliance schedule and accompanying explanatory material provided by Atlantic City Electric Co. to representatives of EPA at a November 29, 1977 meeting attended by the parties.

3. Final report prepared by GCA for EPA entitled "ESECA Compliance Schedule Evaluation" and dated July 1978.

EPA also points out that after July 1, 1979 failure by the company to accomplish any increment by the date called for in the compliance schedules may be cause for the company to be subject to a noncompliance penalty under section 120 of the Clean Air Act.

In view of the preceding remarks concerning the air quality impact of the revised "Sulfur-in-Coal" regulation and the acceptability of the compliance schedules in the Consent Judgment, EPA proposes to approve these revisions.

This notice is issued as required by section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted as to whether the proposed revisions to the New Jersey State Implementation Plan should be approved or disapproved. The Administrator's decision regarding approval or disapproval of these proposed plan revisions will be based on whether they meet the requirements of section 110(a)(2)(A)-(K) of the Clean Air Act and EPA regulations in 40 CFR part 51.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601).)

Dated: September 13, 1978.

ECKARDT C. BECK,
Regional Administrator,
Environmental Protection Agency.

[FR Doc. 78-26241 Filed 9-18-78; 8:45 am]

[4110-84]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 59]

GRANTS FOR FAMILY PLANNING SERVICES

Proposed Rulemaking

AGENCY: Public Health Service, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Assistant Secretary for Health proposes changes in the regulation governing the award and administration of grants for family planning services. The proposed regulation, in fulfillment of statutory amendments, requires projects to offer natural family planning methods; raises the income levels below which individuals may receive services without charge; and assures local and regional entities that have been consolidated into larger projects, a voice in the decisionmaking of the consolidated grantee.

DATE: Comments must be received by November 3, 1978.

ADDRESSES: Written comments, preferably in triplicate, should be sent to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, Room 6-17, 5600 Fishers Lane, Rockville, Md. 20857. All comments received in timely response to this notice will be considered and will be available for public inspection and copying at the above address on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FURTHER INFORMATION CONTACT:

Mr. Samuel Taylor, Public Health Advisor, Office for Family Planning, Bureau of Community Health Services, Room 7-49, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, telephone 301-443-2430.

SUPPLEMENTARY INFORMATION: This Notice sets forth proposals for implementing the amendments to title X of the Public Health Service Act (42 U.S.C. 300 et seq.) for the administration of grants for family planning services. The statute, as amended, requires the Secretary to issue regulations to implement these amendments. On April 11, 1977, the Secretary published a Notice of Intent to issue proposed rules and invited public comments. Summaries of the substantive comments received in response to that Notice and proposed changes to the regulation are set forth below.

1. Pub. L. 94-63 amended section 1001(a) of the Public Health Service Act (42 U.S.C. 300) to require that the range of family planning methods offered by family planning projects include natural family planning methods.

Sixty-six comments were received regarding natural family planning services under title X of the Act. Most of the comments urged that the regulation be amended to permit direct grant assistance to organizations which offer only natural family planning methods. This suggestion was rejected as contrary to the statute.

The statutory amendment states that family planning projects "shall offer a broad range of acceptable and effective family planning methods (including natural family planning methods)." The amendment reinforces the original requirement in the Family Planning Services and Population Research Act of 1970 that each project offer comprehensive family planning services. Therefore, grants cannot be made to entities which propose to offer only one method or a limited scope of methods, regardless of whether the single method is natural family planning or a particular intervention type. This requirement is consistent with the legislative intent to enable persons to make informed choices on the methods which best suit their needs and are compatible with their personal beliefs.

It should be noted, however, that a facility or entity offering only natural family planning methods can receive assistance under title X by participating, as a provider of natural family planning services, in an otherwise approvable project which offers a broad range of services.

2. There were recommendations to omit the requirement for medical services (e.g., a physician's examination, laboratory services, and referral to other medical facilities when indicated) as a component when providing natural family planning services. The requirement that projects offer a broad range of family planning methods is designed to assure that an individual seeking services is given sufficient information to make an informed choice of method. Medical services are necessary to assure that each individual may be fully informed. The requirement for a medical examination and other appropriated medical services is, therefore, retained.

3. Several comments recommended revision of data reporting requirements for the natural family planning components of projects so that more accurate data regarding current use of such methods would be available. Requiring specific data elements is inappropriate in regulations; therefore, no change in the regulation is necessary.

4. Several comments recommended inclusion of a definition of "natural family planning methods." This recommendation was not accepted because it is felt that, for program implementation, the term is adequately understood, and a definition at the present time might prove to be unduly restrictive as research in this area makes new information available.

5. Section 1001(b) of the act, as amended, assures local and regional entities of the right to apply directly for title X grants, and requires the Secretary by regulation to "fully provide for and protect such right." The legislative history shows that the intent of this provision is to prevent "systematic" consolidation of grantees. As the Secretary does not intend to undertake further extensive consolidation, and the present regulation fully protects the right of local and regional entities to apply directly for such assistance, no regulatory revision is necessary to protect this right.

One respondent requested that the regulation contain specific evaluation and award criteria to fulfill the requirement that the Secretary "fully provide for and protect" the right of local or regional entities to apply for title X grants, and implied that the lack of more detailed grant review and evaluation criteria effectively diminishes the right to apply and fairly complete. The six review criteria set forth in the regulation include four contained in the statute. The criteria are constructed to provide an adequate standard by which to judge among competing applicants, and thus permit

the Secretary to utilize his experience and expertise in making discretionary judgments based on varying and competing circumstances and interests. Yet the criteria are sufficiently explicit to provide prospective applicants with guidance on the project elements which are significant in making funding decisions. Therefore the present criteria are being retained. The respondent also objected to the absence of an appeals mechanism for unsuccessful initial applicants. In accordance with Department policy, because title X grants are discretionary project grants, no appeals procedure is provided for unsuccessful initial applicants.

The legislative history of section 1001(b) of the act, as amended, shows the further intent to assure local and regional entities of the right to participate in consolidation decisions which would affect their operations, as well as to assure potential and existing subgrantees of the right to participate in the ongoing decisionmaking of their respective consolidated grantees. Views were solicited as to the need for additional requirements to assure such participation.

Most responses to this issue favored a general approach so as to permit flexibility in arrangements for securing appropriate participation. Therefore it is proposed to require documentation in applications that entities which are potential subgrantees have been given an opportunity to participate in consolidation decisions, and existing (or potential) subgrantees are to be given the opportunity to participate in the ongoing decisionmaking of their respective consolidated grantees.

6. Pub. L. 94-63 amended section 1006(c) of the act to require that the Secretary define the term "low-income family" so as to ensure that economic status will not be a deterrent to participation in the programs assisted under title X. By statute, low-income individuals are the priority group to receive family planning services and may not be charged for such services. The present regulatory definition places low income at fixed dollar levels, for example, $5,000 annual income for a family of four. The legislative history of the amendment shows that it was intended that the levels be raised to dollar amounts which are more appropriate in today's economy. To revise these dollar levels, it was proposed in the Notice of Intent (NOI) that one approach could be for the Secretary to tie the income cut-off to an annually revised national standard or index. Alternative proposals and comments were invited.

Twenty-four comments were received, the majority of which supported the approach of defining "low income" by trying an income cut-off to a national standard or index. Of the comments recommending a specific level, most favored using 150 percent of the income levels established by the Community Services Administration (CSA) Income Poverty Guidelines.

Several comments recommended use of 80 percent of a State's median income, an income criterion used under title XX of the Social Security Act; and one writer urged that the Bureau of Labor Statistics (BLS) income levels be used as the standard instead of the CSA data.

These latter proposals were not accepted. Defining "low income" as 80 percent of each State's median income represents levels significantly higher than 150 percent of the CSA levels, and, therefore would tend to dilute the statutory priority. Because of the statutory prohibition on charges, adopting such a level could result in having persons who are able to pay receive services without charge, thereby using scarce resources inappropriately. In addition, it should be noted that, under title XX, 80 percent of each State's median income is not set forth as a criterion for "low income" but rather, as a ceiling above which individuals must be charged. State title XX agencies are not prohibited from charging persons with annual incomes below this level, and several States do charge such individuals for family planning services. The BLS levels also are too high for the purpose of the title X program, and, unlike the availability of nationwide data with respect to the CSA levels, national data are not available on the number of persons with incomes below the BLS levels. Such information would be needed to assure that program resources are utilized effectively.

A recommendation to delete income eligibility requirements for family planning services in low-income areas was also rejected. The statute imposes the requirement that procedures be established to define "low income" so as to assure that low-income persons receive priority for services and receive services without charge.

The Secretary has therefore concluded that "low income" is appropriately defined as 150 percent of the CSA Income Poverty Guidelines for the purpose of implementing the title X program. Defining "low income" at the 150 percent level provides a reasonable cut-off to assure that economic status will not be a deterrent to participation in the program, and it represents a significant increase over the levels set forth in the present regulation. This appears to be the most feasible current approach because (1) it provides uniformity in the administration of the program and is compatible with eligibility criteria for several other Public Health Service (PHS) grant programs, and (2) national data are available with respect to individuals at or below the 150 percent level.

It is recognized that all measures of poverty and "low income" have serious limitations, and adoption of the CSA Income Poverty Guidelines as an index for implementing the family planning program does not mean that this measure is regarded as superior; simply, it is considered the most suitable within the statutory framework and the aims of the program.

Several comments recommended that the income eligibility and priority levels of the various PHS programs be consolidated. The Department is sensitive to this concern and is striving to bring about more uniformity. The differing goals and statutory bases of the various programs, however, often preclude consolidation or uniformity.

7 Seventeen comments were received in regard to payment for services. Although several respondents recommended waiving fees for certain groups. such as unemancipated minors, students, and persons with excessive medical expenses, the majority recommended inclusion of general criteria for such waivers on the basis that a detailed listing could be burdensome and limit flexibility. This recommendation was accepted and the regulatory language has been revised to reflect a general approach rather than a detailed enumeration of specific economic or other circumstances which would constitute the basis for a waiver. For the purpose of the program, individuals who do not meet the established income cut-offs, but who are nevertheless unable to pay for family planning services, would be considered "low income" if their economic or other circumstances warrant such a determination (e.g.. teenageers who do not have access to their parents' income would be considered "low income" on the basis of their own resources).

Several comments recommended that voluntary contributions from low-income patients be authorized. Although both the statute and the regulation prohibit the imposition of fees with regard to low-income familes, There are no restrictions on receiving voluntary contributions. Thus, no change in the regulation is necessary.

8. In the NOI, the Secretary proposed, as a matter of policy, to require grantee assurance, without exception, that family planning services be available without discrimination on the basis of age, sex, or marital status. The present regulation prohibits such discrimination except when grantees can receive a waiver by demonstrating "good cause" for such a waiver. Public views were solicited in the NOI as to what problems would be created if the

exception for "good cause" were eliminated.

The majority of the respondents objected to removal of the exception with respect to age discrimination. It was felt that legal problems could be created for physicians practicing in States with laws requiring parental consent for a minor to receive such services. In view of this potential conflict, the Secretary has retained the present regulatory provision which prohibits discrimination on the basis of age but does authorize a waiver for "good cause."

9. Several comments recommended the inclusion of regulatory procedures for notifying State agencies of Federal grants to entities in their statewide areas, so that planning can be more effective in regard to the need for services. Current program policy reflects the applicability of Part I of Office of Management and Budget (OMB) Circular No. A-95 and Title XV of the Public Health Service Act (which relates to review and approval by appropriate health planning agencies at local and State levels), although title XV was enacted after the publication of the present regulation. The revised regulation states the applicability of OMB Circular No. A-95 and title XV to family planning grants administered under title X.

The Secretary proposes to amend 42 CFR Part 59 as set forth below.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: April 25, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: September 11, 1978.

HALE CHAMPION,
Acting Secretary.

42 CFR Part 59 is proposed to be amended as follows:

1. Section 59.2(e) is revised to read as follows:

§ 59.2 Definitions.

* * * * *

(e) "Low-income family" means a social unit composed of one or more individuals living together as a household whose total annual income does not exceed 150 percent of the most recent applicable "CSA Income Poverty Guideline" issued by the Community Services Administration (45 CFR 1060.2), except that "low-income family" also includes members of families whose annual family income exceeds this amount but who, as determined by the project director, are unable, for good cause shown, to pay for family planning services.

* * * * *

§ 59.4 [Amended]

2. Section 59.4(c) is revised to read as follows:

* * * * *

(c) An applicant must indicate that prior to submission of the application, it has notified both the State and the Areawide A-95 Clearinghouse of its intent to apply for Federal assistance, in accordance with the requirements of OMB Circular No. A-95 Revised. Applications will not be formally reviewed without Clearinghouse comment or verification that no comments were made within the applicable period available to the Clearinghouses for comment.

* * * * *

3. Section 59.4 is amended by adding a new paragraph (d) to read as follows:

* * * * *

(d) An application must contain evidence that the applicable requirements of section 1513(e) of the Act relating to review and approval by the appropriate health planning agencies have been met.

4. Section 59.5 is revised to read as follows:

§ 59.5 Project requirements.

(a) An approvable application must contain the following:

(1) Assurances satisfactory to the Secretary that:

(i) Priority in the provision of services will be given to persons from low-income families; and

(ii) No charge will be made for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a Government agency) which is authorized or is under legal obligation to pay this charge. Charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that

(A) Charges to persons from families whose annual family income exceeds 250 percent of the CSA Income Poverty Guidelines will be made in accordance with a schedule of fees designed to recover the reasonable cost of providing services; and

(B) Where a third party (including a Government agency) is authorized or legally obligated to pay for services, effort will be made to obtain the appropriate third-party payments without application of any discounts. Where the cost of services is to be reimbursed under Title XIX or Title XX of the Social Security Act, a written agreement with the Title XIX or Title XX agency is required.

(iii) The project will not provide abortion as a method of family planning;

(iv) Acceptance by any individual of services provided by the project will be solely on a voluntary basis and no individual will be subjected to any coercion to receive services or to employ any particular method of family planning, and acceptance of services will not be a prerequisite to eligibility for, or receipt of, any other service or any other program of the applicant;[2] and

(v) Services will be made available in a manner which protects the dignity of the individual.

(2) Provisions for a broad range of acceptable and effective medically approved methods of family planning including natural family planning methods. (A facility or entity offering only natural family planning methods, or any other single method of family planning, can participate in a project as long as the entire project offers a broad range of family planning services.)

(b) In addition to the requirements of paragraph (a) of this section, an approved application must contain each of the following unless the Secretary determines that the applicant has established good cause for its omission:

(1) Assurances satisfactory to the Secretary that:

(i) Services will be made available without the imposition of any durational residency requirement or requirement that a physician has referred the patient;

(ii) Services will be made available without regard to religion, creed, age sex, parity, or marital status;

(iii) Family planning medical services will be performed under the direction of a physician with special training or experience in family planning; and

(iv) All services purchased for project participants will be authorized by

[2] Section 205 of Pub. L. 94-63 provides as follows:

"Any: (1) officer or employee of the United States, (2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or (3) persons who receive, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both."

the Project Director or his designee on the project staff.

(2) Evidence that local and regional entities (including existing and potential subgrantees), which have previously provided or propose to provide family planning services to the area proposed to be served by the applicant, have been given an opportunity to participate to the maximum extent feasible in the development of the application to the extent that it relates to the consolidation of their service areas or health resources or would otherwise affect their operations.

(3) Provision for an opportunity for participation by existing or potential subgrantees to the maximum extent feasible in the ongoing policy decision-making of the project.

(4) Provisions of an opportunity for participation by persons broadly representative of all significant elements of the population to be served and by others in the community knowledgeable about the community's needs for family planning services, in the development, implementation, and evaluation of the project.

(5) Provision for preservice and in-service training for all project personnel.

(6) Provisions for medical services related to family planning, including physician's consultation, examination, prescription, and continuing supervision; laboratory examination; contraceptive supplies; and necessary referral to other medical facilities when medically indicated.

(7) Provision for social services related to family planning, including counseling, referral to and from other social and medical service agencies, and ancillary services which may be necessary to facilitate clinic attendance.

(8) Provision for diagnostic and treatment services for infertility.

(9) Provisions for coordination and use of referral arrangements with other providers of health care services, with local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other Federal programs.

(10) Provisions for informational and educational programs designed to achieve community understanding of the objective of the program, to inform the community of the availability of services and to promote continued participation in the project by persons to whom family planning services may be beneficial.

(11) In cases where the project will provide family planning services by contract or other similar arrangements with the actual provider of services, a plan which establishes rates and methods of payment for medical care. These payments must be made under agreements with a schedule of rates and payment procedures maintained by the grantee. The grantee must be prepared to prove that rates are reasonable and necessary.

(12) A description of the standards and qualifications which will be required for personnel (including the project director) and facilities used in carrying out the project.

5. Section 59.6(b) is revised to read as follows:

§ 59.6 Evaluation and grant awards.

* * * * *

(b)(1) The Secretary will determine the amount of any award on the basis of his determination of project costs (which shall be based on his estimate of the total costs necessary for the performance of the project) except that no grant may be made for a project for less than 90 percent of the project's costs as so determined, unless the grant is to be made for a project for which a grant was made under section 1001 of the Act for the fiscal year ending June 30, 1975, for less than 90 percent of its costs. In that case, the grant shall be made for a percentage of project costs which shall not be less than the percentage of costs for which the fiscal year 1975 was made.

(2) No grant may be made for an amount equal to 100 percent of the project's estimated costs.

* * * * *

[FR Doc. 78-26262 Filed 9-18-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

TOBACCO INSPECTION; THOMAS B. HALL, JR., AND MARVIN E. INGE, JR.

Public Hearing Regarding Application

Notice is hereby given of a public hearing to be held in the Conference Room of the Agricultural Building, Commerce Street, Kenbridge, Va. 29344, beginning at 10 a.m., e.s.t., on October 26, 1978, upon the application of Mr. Thomas B. Hall, Jr., T/A Virginia Dark Fired Tobacco Growers' Marketing Association, Inc., Farmville, Va., and Mr. Marvin E. Inge, Jr., T/A Planters Warehouse, Blackstone, Va., for tobacco inspection and price support services. Such public hearing will be conducted and evidence received pursuant to the concurrent and identical policy statements and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (37 FR 24693, June 18, 1976).

Done at Washington, D.C., this 14th day of September 1978.

P. R. "BOBBY" SMITH,
Assistant Secretary for Marketing Services.

[FR Doc. 78-26284 Filed 9-18-78; 8:45 am]

[3410-11]

Forest Service

LUMBER PRICE INDEX TRENDS, PONDEROSA PINE

Final Policy

AGENCY: Forest Service, USDA.

ACTION: Final policy.

SUMMARY: This policy sets forth Forest Service procedures for the replacement of the current ponderosa pine index used for adjustment of contract rates in timber sale contracts with two new indices based on geographical areas.

FOR FURTHER INFORMATION CONTACT:

M. E. Chelstad or George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, 202-447-4051.

SUPPLEMENTARY INFORMATION: On July 13, 1978, the Chief, Forest Service, published a Notice of Intent (43 FR 30086) which set forth procedures for replacing the single Western Wood Products Association (WWPA) ponderosa pine index with two indices based on geographical areas. These indices are used by Government agencies in the appraisal of public timber and to adjust prices paid for timber under certain timber sale contracts.

DISCUSSION OF RESPONSES TO NOTICE: Respondents suggested that holders of existing contracts be given the option of retaining the current index or converting to the appropriate replacement index. Western Wood Products Association proposes to discontinue publication of the present index. When this index becomes unavailable, existing contract language authorizes substitution of an acceptable index.

These differentials are:

Twenty-four month average indices (weighted) second quarter calendar year 1977 through second quarter calendar year 1978.

	Board feet (thousands)	Per 1,000 board feet
Ponderosa pine (1971 basis)	4,506,129.847	$280.87
Ponderosa pine, Coast-North Inland (1975-76 basis)	3,870,577.567	280.40
Per 1,000 difference		-0.47
Ponderosa pine (1971 basis)	4,506,129.847	280.87
Ponderosa pine, Rocky Mountain (1975-76 basis)	604,993.392	234.98
Per 1,000 difference		-51.89
Ponderosa pine (1971 basis)	4,506,129.847	280.87
Whitewoods (1974-75 basis)	1,864,180.867	173.88
Per 1,000 difference		-107.99

IMPLEMENTATION OF REPLACEMENT INDICES: The formula to adjust present contract base indices for ponderosa pine is:

New Base Index=(weighted 24-month average for replacement index)-(weighted 24-month average current index)+(present contract base index).

Transition of present contracts to the appropriate new index will be made during the fourth quarter of 1978.

New sale offerings advertised after October 1, 1978, will use the appropriate new indices.

Publication of the Ponderosa Pine Index (1971 Basis) will be discontinued after September 30, 1978, because continued publication would provide misleading price trends at an unnecessary administrative expense.

Some respondents suggested that because the Regional Forester in Denver has decided that new timber sales on the Black Hills National Forest should utilize the WWPA Whitewoods Index, the replacement index for ponderosa pine on existing contracts there should be the WWPA Whitewoods Index. To provide consistency of application in the use of WWPA indices in the appraisal of timber and adjustment of prices paid for timber under certain existing contracts in the Black Hills appraisal zone, the Ponderosa Pine Index (1971 Basis) in the contracts may be replaced with the WWPA Whitewoods Index (1974-75 Basis).

It was suggested that the period of time selected to calibrate the index change give due consideration to any bias resulting from seasonal variances.

In the opinion of the Forest Service, new indices are satisfactory indicators of market price trends of lumber if appropriate changes are made in present contract base indices, so that the same stumpage rates result under the new basis as under the old basis over a representative changeover period. It has been determined that the 24-month period, June 1976 through June 1978

is appropriate to establish the differential for replacement indices in existing timber sale contracts. This 24-month period will properly alleviate any seasonal bias.

Holders of existing contracts that are subject to base index changes will be notified in writing of the change by the appropriate Forest Service official.

Dated: September 12, 1978.

JOHN L. MCGUIRE,
Chief, Forest Service.

[FR Doc. 78-26268 Filed 9-18-78; 8:45 am]

[3410-01]

Office of the Secretary

CITIZENS ADVISORY COMMITTEE ON EQUAL OPPORTUNITY

Intent To Establish

Notice is hereby given that the Secretary of Agriculture proposes to establish a Citizens Advisory Committee on Equal Opportunity. The Committee will provide an impartial review of the Department's efforts to promote equal opportunity and will recommend needed changes in the Department's rules, regulations and orders to assure discrimination-free activities.

The Secretary has determined that establishment of the Committee is necessary and in the public interest in connection with the duties imposed on the Department of Agriculture by law.

Comments of interested persons concerning the establishment of this Committee may be submitted to the Director, Office of Equal Opportunity, Room 247-E, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, by October 4, 1978.

All written comments made pursuant to this notice will be available for public inspection at the above office during regular business hours.

JOAN S. WALLACE,
Assistant Secretary for Administration.

SEPTEMBER 13, 1978.

[FR Doc. 78-26267 Filed 9-18-78; 8:45 am]

[3510-15]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-603, Sub. 1]

Amendment to Applications

Notice is hereby given that the notice titled docket S-603 as published in the FEDERAL REGISTER on April 26, 1978 (43 FR 47856), is modified as follows to reflect an amendment dated August 25, 1978, filed on behalf of Suwannee River Finance, Inc., Suwannee River SPA Finance, Inc., and Suwannee River Phosphate Finance, Inc.:

The following language in the first paragraph of the notice of applications (docket No. S-603) is deleted:

• • • that will engage in the carriage of liquid phosphoric acid from ports on the east coast and gulf coast of the United States to destinations in the Union of Soviet Socialist Republics, directly or by transshipment, and the carriage of liquid and dry bulk cargoes in the foreign to foreign commerce or the U.S. import commerce on the return voyage in such ports in the United States • • •.

The following language is substituted in lieu of the deleted language:

• • • that will engage in the carriage of liquid and dry bulk cargoes in the export and import foreign commerce of the United States and between foreign ports • • •.

Interested parties may inspect this amendment to the applications described in docket No. S-603 in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20230.

Any person, firm, or corporation having an interest in such application and who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit such views and comments in writing, in triplicate, to the Secretary, Maritime Subsidy Board, by the close of business on September 25, 1978. The Maritime Subsidy Board will consider such views and comments and take such actions with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By order of the Maritime Subsidy Board.

Dated: September 13, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-26228 Filed 9-18-78; 8:45 am]

[3510-15]

MARITIME APPROPRIATION AUTHORIZATION ACT FOR FISCAL YEAR 1979

Notice is hereby given the Pub. L. 95-298 (92 Stat. 339), the Maritime Appropriation Authorization Act for fiscal year 1979, provides as follows with regard to construction-differential and operating-differential subsidy:

SEC. 2. Funds are authorized to be appropriated without fiscal year limitation as the appropriation Act may provide for the use of the Department of Commerce, for the fiscal year 1979, as follows: (1) For acquisition, construction, or reconstruction of vessels and construction-differential subsidy and cost of national defense features incident to the construction, reconstruction, or reconditioning of ships, not to exceed $157,000,000: *Provided*, That no funds authorized by this paragraph may be paid to subsidize the construction of any vessel which will not be offered for enrollment in a Sealift Readiness program approved by the Secretary of Defense: *Provided further*, That in paying the funds authorized by this paragraph, the construction subsidy rate otherwise applicable may be reduced by 5 percent unless the Secretary of Commerce, in his discretion, determines that the vessel to be constructed is part of an existing or future vessel series;

(2) For payment of obligations incurred for operating-differential subsidy, not to exceed $262,800,000: *Provided*, That no funds authorized by this paragraph may be paid for the operation of any vessel which is not offered for participation in a Sealift Readiness program approved by the Secretary of Defense; • • •

A sealift readiness program has been established by the Military Sealift Command (MSC), Department of the Navy, for liner and for bulk cargo vessel operators, and the program has been approved by the Secretary of Defense.

By separate correspondence, current holders of operating-differential subsidy (ODS) contracts as well as former contract holders with open ODS accounts that could be settled and paid in fiscal year 1979, have been advised of the requirements of the program, the procedure for the submittal of vessel offers to the MSC, and that the offers are to be made prior to September 29, 1978.

With respect to construction-differential subsidy (CDS), applicants for CDS to aid in the construction of new vessels or reconstruction of existing vessels must, prior to the award of CDS, agree to offer such vessels to the MSC for enrollment in the sealift readiness program before CDS can be awarded which would obligate all or part of the $157,000,000 in CDS funds authorized for fiscal year 1979 by Pub. L. 95-298. Current and prospective CDS applicants may obtain information regarding the requirements of the sealift readiness program and the procedure for submittal of vessel offers to the MSC either from the Secretary, Maritime Administration, Department of Commerce, Washington, D.C. 20230, or the Commander, Military Sealift Command, Department of the Navy, Washington, D.C. 20390.

By order of the Maritime Subsidy Board, Maritime Administration.

Dated: September 13, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-26227 Filed 9-18-78; 8:45 am]

[3510-04]

National Technical Information Device

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent 3,981,144: Dual Stage Supersonic Diffuser; filed October 28, 1975; patented September 21, 1976.

Patent 3,981,264: Droplet Impact Recorder; filed January 16, 1975; patented September 21, 1976.

Patent 3,981,450: In-Flight Modulating Thrust Reverser; filed September 22, 1975; patented September 21, 1976.

Patent 3,981,467: Launch Lock Device; filed October 17, 1975; patented September 21, 1976.

Patent 3,981,588: Means and Method for Determining Meridian Location and Azimuth; filed August 5, 1974; patented September 21, 1976.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Branch, General Services Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent 3,953,607: Method of Controlling Insects Using 7 Ethoxyl-1-(p-Ethylphenoxyl)-3, 7-Dimethyl-2-Octene; filed November 26, 1974; patented April 27, 1976.

Patent 3,978,932: Apparatus and Method for Obtaining Undisturbed Soil Core Samples; filed January 28, 1975; patented September 7, 1976.

Patent 3,981,100: Highly Absorbant Starch-Containing Polymeric Compositions; filed September 8, 1975; patented September 21, 1976.

Patent 3,983,067: Diacetal Derivatives of Polyunsaturated Fatty Esters as Primary Plasticizers for Polyvinylchloride; filed July 1, 1974; patented September 28, 1976.

Patent 3,984,361: Preparation of Starch Graft Polymer Latexes by Sonification; filed May 30, 1975; patented October 5, 1976.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent 981,176: Dual Frequency Acoustic Gas Composition Analyzer; filed September 16, 1974; patented September 21, 1976.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets, Washington, D.C. 20240.

Patent 3,949,353: Underground Mine Surveillance System; filed June 23, 1975; patented April 6, 1976.

Patent 3,971,226: Prestresses Roof Support System; filed October 31, 1975; patented July 27, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent 3,982,178: Method of Determining Adequacy of Substrate Memory Wire During the Plating Process; filed January 29, 1975; patented September 21, 1976.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent 3,965,096: Ultraviolet and Thermally Stable Polymer Compositions; patented June 22, 1976.

[FR Doc. 78-26247 Filed 9-18-78; 8:45 am]

[3510-04]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Branch, General Services Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent 3,960,902: Synthetic Hormones for Insect Control; filed July 2, 1975; patented June 1, 1976.

Patent 3,970,688: Synthetic Hormones for Insect Control; filed July 2, 1975; patented July 20, 1976.

Patent 3,975,560: Phosphorus and Nitrogen Containing Resins for Flameproofing Organic Textiles; filed August 22, 1974; patented August 17, 1976.

Patent 3,982,014: Arthropod Maturation Inhibitors; filed March 24, 1975; patented September 21, 1976.

Patent 3,985,616: Immobilization of Enzymes with a Starch-Graft Copolymer; filed September 8, 1975; patented October 12, 1976.

Patent 3,985,921: Treatment of Wood With Butylene Oxide; filed June 18, 1975; patented October 12, 1976.

Patent 3,986,259: Rotary Bark Hack; filed April 17, 1976; patented October 19, 1976.

Patent 3,987,058: Preparation and Uses of Stable, Bound Stationary Phases; filed February 27, 1975; patented October 19, 1976.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 3,915,695: Method for Treating Reactive Metals in a Vacuum Furnace; filed January 8, 1974; patented October 28, 1975.

Patent 3,924,675: Energy Absorber for Sodium-Heated Heat Exchanger; filed May 3, 1973; patented December 9, 1975.

Patent 3,928,027: Nonswelling Alloy; filed August 20, 1974; patented December 23, 1975.

Patent 3,934,239: Adjustable Electronic Load-Alarm Relay; filed September 27, 1974; patented January 20, 1976.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent 3,983,118: Production of N5-Methyltetrahydrohomofolic Acid and Related Reduced Derivatives of Homofolic Acid; filed August 16, 1974; patented September 28, 1976.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240.

Patent 3,977,312: Parachute Stopping for Mine Ventilation Use; filed October 31, 1975; patented August 31, 1976.

[FR Doc. 78-26248 Filed 9-18-78; 8:45 am]

[3710-08]

DEPARTMENT OF DEFENSE

Department of the Army

PRIVACY ACT OF 1974

New System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of a new system of records.

SUMMARY: The Department of the Army proposes to add a new system of records to its inventory subject to the Privacy Act of 1974.

DATES: This system shall be effective as proposed without further notice in 30 calendar days from the date of this publication (October 19, 1978) unless comments are received on or before October 19, 1978, which would result in a contrary determination and require republication for further comments.

ADDRESS: Any comments, including written data, views or arguments concerning this system should be ad-

dressed to the System Manager identified in the system of records.

FOR FURTHER INFORMATION CONTACT:

Mr. Guy B. Oldaker, Administrative Management Directorate, The Adjutant General Center, Department of the Army, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20314, telephone 202-693-0973.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices as prescribed by the Privacy Act of 1974, 5 U.S.C. 552a, Pub. L. 93-579, have been published in the FEDERAL REGISTER as follows:

FR Doc. 77-28255 (42 FR 50396), September 28, 1977; FR Doc. 77-32975 (42 FR 50999), November 15, 1977; FR Doc. 78-1855 (43 FR 3151), January 23, 1978; FR Doc. 78-9239 (43 FR 14713), April 7, 1978; FR Doc. 78-9713 (43 FR 15353), April 12, 1978; FR Doc. 78-17146 (43 FR 26606), June 21, 1978; FR Doc. 78-17737 (43 FR 27882), June 27, 1978; FR Doc. 78-18880 (43 FR 29600), July 10, 1978; FR Doc. 78-19614 (43 FR 30594), July 17, 1978; FR Doc. 78-21772 (43 FR 34520), August 4, 1978; FR Doc. 78-23953 (43 FR 38070), August 25, 1978.

The Department of the Army has submitted a new system report for this system on August 17, 1978, under the provisions of 5 U.S.C. 552a(o) of the Privacy Act.

MAURICE W. ROCHE,
Director Correspondence and Directives Washington Headquarters Services Department of Defense.

SEPTEMBER 13, 1978.

A1014.08cDAAG

System name:

College Transcript Registry System

System location:

Primary System: American College Testing Program (ACT), P.O. Box 168, Iowa City, Iowa 52240.

Decentralized Segments: Education Directorate, The Adjutant General Center (TAGCEN), Forrestal Building, Washington, D.C. 20314; Army Education Center, Fort Eustis, Va. 23604; and Army Education Center, Fort Polk, La. 71459.

Categories of individuals covered by the system:

All military personnel assigned or attached to Forts Eustis and Polk who have participated in the Army Continuing Education System and who have attended Army service schools.

Categories of records in the system:

Records include Education Services Officer File, Course/Test File, Soldier File, Confirmation Rosters—Courses, Confirmation Rosters—Tests, separation lists, and correspondence or documents containing similar or related information.

The Soldier File contains the following information: name, social security number (SSN), date of birth, racial/ethnic data (optional), sex (optional), pay grade, unit number, primary and secondary military occupational specialties, and record of each course or test the individual has taken—in the form of course/test number, test scores, and education services officer identification code.

Separation lists contain home addresses.

Authority for maintenance of the system:

Title 10 U.S.C., Section 3012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose of the system is to provide a transcript, properly authenticated and endorsed by an independent agency recognized by the academic institutions, to the individual or to academic institutions, or other agencies designated by the affected member to allow advanced placement of the individual in an educational program, which precludes a retake of basic college courses; for verification of training and experiences recognized by the civilian labor market; and to conduct research.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored on computer magnetic tapes and drums at ACT and TAGCEN.

Paper records in file folders, cards in card files, and computer printouts may be filed at any/all locations participating in the system.

Retrievability:

Records are retrieved by SSN and name or by one, or a combination of, data elements contained in the system.

Safeguards:

At ACT the physical security of the registry data is guarded in a variety of ways. Data are collected and distributed via first class mail. The data-collection forms are retained in security containers for a year after the data have been entered into the system. All programs and data files are kept in a secure environment, which includes closed-circuit video monitoring, the use of identification cards and passes, with restricted areas (such as the tape library) open only to certain employees. The building also includes fire detection and suppression equipment.

At other locations buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained.

Retention and disposal:

Data-collection forms and related correspondence are destroyed 1 year after data are transferred to the register. The individual record will be dropped from the active register when there are too few event segments (records of courses/tests taken) for an individual in any given quarter or the individual is separated from the Army. No data for persons with too few event segments will be kept. Data on separated individuals will be stored on an inactive register, retained at ACT for 3 years, transferred to TAGCEN, held for 10 years and destroyed. (This retention period is subject to approval by the National Archives and Records Service.)

System manager(s) and address:

The Adjutant General, Headquarters, Department of the Army (HQDA), The Pentagon, Washington, D.C. 20310.

Notification procedure:

Information may be obtained from: HQDA (DAAG-ED), Forrestal Building, Washington, D.C. 20314, telephone: 202-693-7748.

Record access procedures:

Transcript requests from individuals should be addressed to Education Services Officer at Fort Eustis or Fort Polk, as applicable.

Written request for information should contain the full name of the individual, SSN, current address, and telephone number.

Visits are permitted to the Education Directorate, TAGCEN (DAAG-ED), Forrestal Building, Washington, D.C. 20314, and at the Army Education Centers at posts where data are maintained.

For personal visits, the individual should be able to give sufficient identification, i.e., military identification card, driver's license, and give some verbal information that could be verified with his/her records.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories:

Completed forms from individuals, forms from Education Services Officers at Forts Eustis and Polk which include: Department of the Army (DA) Form 4540, Apprenticeship Applica-

tion; DA Form 1821, Army Continuing Education System; DA Form 669, Educational Development Record; DA Form 2171, Request for Tuition Assistance; and VA Form 22-1990, Request for Educational Assistance; U.S. Army Military Personnel Center (MILPERCEN) Officer Master Files (OMF) and Enlisted Master Files (EMF).

Systems exempted from certain provisions of the act:

None.

[FR Doc. 78-26372 Filed 9-18-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

CANADIAN CRUDE OIL ALLOCAT' PROGRAM

Allocation Notice for the October 1 Through December 31, 1978, Allocation Period

In accordance with the provisions of the Mandatory Canadian Crude Oil Allocation Regulations, 10 CFR Part 214, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby publishes the allocation notice specified in § 214.32 for the allocation period commencing October 1, 1978.

The issuance of Canadian crude oil rights for the October 1, 1978, allocation period to refiners and other firms is set forth in the appendix to this notice. As to this allocation period, the appendix lists: (1) The name of each refiner and other firm to which rights have been issued; (2) the base period volume[1] of Canadian crude oil for each first or second priority refinery; (3) the base period volume of Canadian light and heavy crude oil, respectively, for each first or second priority refinery; (4) the nominations to ERA for Canadian light and heavy crude oil, respectively, of each refiner or other firm; (5) the number of rights for Canadian light and heavy crude oil, respectively, expressed in barrels per day, issued to each such refiner or other firm; and (6) the specific first or second priority refineries for which rights are applicable.

The issuance of Canadian crude oil rights is made pursuant to § 214.31, which provides that rights may be issued to refiners or other firms that own or control a first or second priority refinery based on the number of barrels of Canadian light and heavy crude oil, respectively, included in the refinery's volume of crude oil runs to stills or consumed or otherwise utilized by a facility during the base period, November 1, 1974, through October 31, 1975. These calculations have been made and are shown on a barrels per day basis.

The listing contained in the appendix also reflects any adjustments made by ERA to base period volumes to compensate for reductions in volumes due to unusual or nonrecurring operating conditions or to reflect current operating conditions as provided by § 214.31(d).

Based on its review of the affidavits, supplemental affidavits and reports filed pursuant to Subpart D of Part 214, and other information available to the agency, ERA has designated each refinery or other facility listed in the appendix as a first or second priority refinery as defined in § 214.21. If a refinery or other facility has not been designated as a priority refinery by ERA, such refinery or other facility is not entitled to process or otherwise consume Canadian crude oil subject to allocation under the program.

As provided by § 214.31(e), in the allocation period commencing October 1, 1978, each refinery or other firm which has been issued Canadian crude oil rights for light and heavy crude oil, respectively, is entitled to process, consume or otherwise utilize in the priority refinery or refineries specified in the appendix to this notice a number of barrels of Canadian light and heavy crude oil, respectively, subject to allocation under Part 214, equal to the number of rights specified in the appendix.

The Canadian National Energy Board (NEB) has advised ERA that the total volumes of Canadian light and heavy crude oil authorized for export to the United States, and therefore subject to allocation under Part 214, for the 3-month allocation period commencing October 1, 1978, will be as follows: The average export level for Canadian light crude oil will be 55,000 barrels per day (B/D) for October, November, and December. The average export level for Canadian heavy crude oil will be 110,000 B/D for October, 127,000 B/D for November, and 139,000 B/D for December. For purposes of determining allocations of Canadian heavy crude oil, it has been assumed that the average export level will be 125,315 B/D for the 3 months. Any change in the export levels for Canadian light crude oil, including condensate, and Canadian heavy crude oil anticipated for this allocation period will be reflected in revised allocations that will be issued in a supplemental allocation notice or notices.

The NEB has formally advised ERA of the following operational constraint with respect to the export of Canadian light crude oil for the allocation period: 50 B/D of light crude oil through the Union Oil pipeline from the Reagan field in Canada to the Thunderbird refinery (second priority) at Cut Bank, Montana.

ERA has given effect to this operational constraint in the allocations set forth in the appendix.

Allocation of Canadian Light Crude Oil

The authorized export level for Canadian light crude oil for this allocation period is 55,000 B/D. The adjusted base period volumes of Canadian light crude oil for all first priority refineries nominating for light crude oil total 136,678 B/D. Accordingly, with the exception of allocations of light crude oil required by the operational constraint, no allocations of light crude oil are shown for second priority refineries. The export level of light crude oil, as adjusted to reflect the operational constraint, was allocated among first priority refineries nominating for light crude oil on a pro rata basis in the following manner. First, an allocation factor of 0.402040[2] was applied to each first priority refinery's adjusted base period volume of light crude oil. Second, the resulting allocation for Consumers Power Co. was reduced to conform to their nomination for light crude oil for their first priority facility. Third, the allocation factor was recomputed[3] to reflect these adjustments and was reapplied to each first priority refinery's (excluding Consumers Power's Marysville facility) adjusted base period volume of light crude oil to arrive at the final allocations.

Allocation of Canadian Heavy Crude Oil

The authorized export level for Canadian heavy crude oil for October, November, and December 1978, is an average of 125, 315 B/D. First priority refineries nominating for heavy crude oil have been allocated a total of 106,553 B/D of Canadian heavy crude oil, which was calculated by combining their respective base period volumes of Candian light and heavy crude oil or their nominations for heavy crude oil,

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[1] Base period volume for the purposes of this notice means average number of barrels of Canadian crude oil included in a refinery's crude oil runs to stills or consumed or otherwise utilized by a facility other than a refinery during the base period (November 1, 1974, through October 31, 1975) on a barrels per day basis.

[2] 0.402040=Adjusted export level for Canadian light crude oil (55,000 B/D less 50 B/D to Thunderbird refinery=54,950 B/D), divided by sum of adjusted base period volumes of Canadian light crude oil for first priority refineries nominating for Canadian light crude oil (136,678 B/D).

[3] The factor as recomputed is 0.488699=Adjusted export level for light crude oil (54,950 B/D, less allocation to Consumers Power Marysville facility (1,500 B/D)=53,450 B/D), divided by sum of first priority refineries' (excluding Consumers Power) adjusted base period volumes of light crude oil (109,372 B/D).

whichever was less, and subtracting their allocations of light crude oil. In no case do the allocations of heavy crude oil to first priority refineries exceed their nominations for heavy crude oil.

The remaining supply of Canadian heavy crude oil, 18,762 B/D, was allocated among second priority refineries nominating for heavy crude oil on a pro rata basis by applying an allocation factor of 0.978155 [1] to each second priority refinery's base period volume of heavy crude oil to arrive at the final allocations for heavy crude oil.

On or prior to the 13th day preceding each allocation period, each refiner or other firm that owns or controls a first priority refinery shall file with ERA the supplemental affidavit specified in § 214.41(b) to confirm the continued validity of the statements and representations contained in the previously filed affidavit or affidavits, upon which the designation for that priority refinery is based. Each refiner or other firm owning or controlling a first or second priority refinery shall also file the periodic report specified in § 214.41(d)(1) on or prior to the 13th day preceding each allocation period, provided, however, that the information as to estimated nominations specified in § 214.41(d)(1)(i) is not required to be reported.

Within 30 days following the close of each 3-month allocation period, each refiner or other firm that owns or controls a priority refinery shall file the periodic report specified in § 214.41(d)(2) certifying the actual volumes of Canadian crude oil and Canadian plant condensate included in the crude oil runs to stills of or consumed or otherwise utilized by each such priority refinery (specifying the portion thereof that was allocated under Part 214) for the allocation period.

This notice is issued pursuant to Subpart G of ERA's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with DOE's Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before 30 days from the publication of this notice.

Issued in Washington, D.C., on September 13, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-26215 Filed 9-18-78; 8:45 am]

[1] 0.978155 = Export level of Canadian heavy crude oil available to second priority refineries (18,762 B/D), divided by base period volume of Canadian heavy crude oil of second priority refineries nominating for heavy crude oil (19,181 B/D).

APPENDIX

CANADIAN ALLOCATION PROGRAM

RIGHTS - October 1, 1978 to December 31, 1978
(Barrels Per Day)

		Base Period Volumes			Nominations		Allocation	
Priority	Refiner/Refinery	Total Canadian Runs	Canadian Light Crude Oil	Canadian Heavy Crude Oil	Light	Heavy	Light	Heavy
	AMOCO							
II	Whiting, Ind.	26,751	25,560	1,191	0	0	0	0
II	Casper, Wyo.	2,991	2,991	0	0	0	0	0
II	Mandan, N.D.	8,995	8,995	0	0	0	0	0
II	Sugar Creek, Mo.	317	317	0	0	0	0	0
	ARCO							
II	Cherry Point, Wash.	34,225	34,225	0	0	0	0	0
	ASHLAND							
II	Buffalo, N.Y.	36,752	32,033	4,719	0	0	0	0
II	Findlay, Ohio	2,198	33	2,165	0	0	0	0
I	St. Paul Park, Minn.	14,707 1/	13,127 1/	1,580 1/	40,000	22,170	6,415	22,170 2/
	CLARK							
II	Blue Island, Ill.	18,764	18,764	0	0	0	0	0
	CONSUMERS POWER							
I	Essexville, Mich.	13,872	13,872	0	0	0	0	0
I	Marysville, Mich.	27,306	27,306	0	1,500	0	1,500	0
	CONTINENTAL							
I	Billings, Mont.	25,994	25,994	0	25,994	0	12,703	0
II	Denver, Colo.	4,639	4,639	0	4,638	0	0	0
II	Ponca City, Ok.	1,188	1,188	0	1,188	0	0	0
I	Wrenshall, Minn.	20,651	20,651	0	20,651	0	10,092	0
	CRA							
II	Coffeyville, Kan.	318	318	0	0	0	0	0
II	Phillipsburg, Kan.	173	173	0	0	0	0	0
II	Scottsbluff, Neb.	401	401	0	0	0	0	0

Priority	Refiner/Refinery	Base Period Volumes: Total Canadian Runs	Base Period Volumes: Canadian Light Crude Oil	Base Period Volumes: Canadian Heavy Crude Oil	Nominations: Light	Nominations: Heavy	Allocation: Light	Allocation: Heavy
II	CRYSTAL Carson City, Mich.	1,104	1,104	0	0	0	0	0
II	DOW CHEMICAL, U.S.A. Bay City, Mich.	2,767	2,767	0	0	0	0	0
II	ENERGY COOPERATIVE East Chicago, Ind.	10,804	10,267	537	0	0	0	0
I	EXXON Billings, Mont.	15,908	15,908	0	16,000	0	7,774	0
I	FARMERS UNION Laurel, Mont.	13,439	13,439	0	13,500	0	6,568	0
II	GLADIEUX Fort Wayne, Ind.	774	774	0	0	0	0	0
II	GULF Toledo, Ohio	13,253	13,253	0	0	0	0	0
II	HUSKY Cheyenne, Wyo.	4,865	4,865	0	0	0	0	0
II	Cody, Wyo.	806	806	0	0	0	0	0
I	KOCH Pine Bend, Minn.	44,383 1/	3,396 1/	40,987 1/	0	95,000	0	74,383 2/
I	LAKE SUPERIOR D.P. Ashland, Wisc.	125	125	0	0	0	0	0
II	LAKESIDE Kalamazoo, Mich.	1,240	1,240	0	0	0	0	0
II	LAKETON Laketon, Ind.	141	10	131	0	0	0	0
II	LITTLE AMERICA Casper, Wyo.	2,248	2,248	0	0	0	0	0
II	Sinclair, Wyo.	709	709	0	0	0	0	0

Priority	Refiner/Refinery	Base Period Volumes: Total Canadian Runs	Base Period Volumes: Canadian Light Crude Oil	Base Period Volumes: Canadian Heavy Crude Oil	Nominations: Light	Nominations: Heavy	Allocation: Light	Allocation: Heavy
	MARATHON							
II	Detroit, Mich.	10,301	10,159	142	19,022	0	0	0
	MOBIL							
II	Buffalo, N.Y.	24,995	24,995	0	0	4,314	0	0
II	Ferndale, Wash.	45,444	45,444	0	0	7,844	0	0
II	Joliet, Ill.	14,606	2,132	12,474	0	12,842	0	12,202
	MURPHY							
I	Superior, Wisc.	25,625	20,253	5,372	10,000	10,000	9,898	10,000
	NCRA							
II	McPherson, Kan.	836	836	0	0	0	0	0
II	PESTER REFINING CO.							
	El Dorado, Kan.	196	196	0	0	0	0	0
	PHILLIPS							
II	Great Falls, Mont.	1,222	1,222	0	0	0	0	0
II	Kansas City, Kan.	3,352	3,105	247	0	0	0	0
	ROCK ISLAND							
II	Indianapolis, Ind.	1,063	1,063	0	0	0	0	0
	SHELL							
II	Anacortes, Wash.	55,919	55,919	0	0	0	0	0
II	Wood River, Ill.	8,673	8,673	0	0	0	0	0
	SOHIO							
II	Toledo, Ohio	29,182	29,182	0	0	0	0	0
	SUN							
II	Toledo, Ohio	16,427	16,427	0	0	0	0	0
	TENNECO							
II	Chalmette, La.	1,767	1,767	0	0	0	0	0

Priority	Refiner/Refinery	Base Period Volumes: Total Canadian Runs	Base Period Volumes: Canadian Light Crude Oil	Base Period Volumes: Canadian Heavy Crude Oil	Nominations: Light	Nominations: Heavy	Allocation: Light	Allocation: Heavy
	TEXACO							
II	Anacortes, Wash.	41,229	41,229	0	0	0	0	0
II	Casper, Wyo.	1,380	1,380	0	0	0	0	0
II	Lockport, Ill.	1,244	1,244	0	0	0	0	0
	TEXAS AMERICAN							
II	West Branch, Mich.	2,011	2,011	0	0	0	0	0
	THE REFINERY CORP.							
II	Commerce City, Colo.	174	174	0	0	0	0	0
	THUNDERBIRD							
II	Cut Bank, Mont.	554	554	0	50	0	50 3/	0
	TOTAL PETROLEUM							
II	Alma, Mich.	9,727	3,020	6,707	0	8,000	0	6,560
	UNION OIL OF CALIF.							
II	Lemont, Ill.	11,711	11,711	0	10,000	20,000	0	0
	UNITED REFINING							
II	Warren, Pa.	9,917	9,789	128	0	0	0	0
	WYOMING REFINING CO.							
II	New Castle, Wyo.	676	676	0	0	0	0	0
	TOTAL PRIORITY I	202,010	154,071	47,939	127,645	127,170	54,950	106,553
	TOTAL PRIORITY II	469,029	440,588	28,441	34,898	53,000	50	18,762
	TOTAL I&II	671,039	594,659	76,380	162,543	180,170	55,000	125,315

1/ Adjusted.
2/ Adjustments to base period volumes not given effect in allocation of Canadian heavy crude oil.
3/ Operational constraint.

[3128-01]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Requirements To Complete DOE Early Planning Process Identification Report

Pursuant to section 13 of the Federal Energy Administration Act of 1974 (FEAA), as amended, 15 U.S.C. 761 et seq., the Department of Energy (DOE) [1] hereby gives notice of the requirement that each Major Fuel Burning Installation (MFBI) which on or after December 27, 1976 was in or has thereafter entered, or which hereafter enters, the "reporting interval" and meets the "design firing rate requirements" as hereafter specified, complete and submit to DOE the "Major Fuel Burning Installation-Early Planning Process Identification Report" (Report), FEA Form C-607-S-O. Notice of this requirement for filing was previously given by the Federal Energy Administration (FEA) in the FEDERAL REGISTER (42 FR 6622) on February 3, 1977. The present notice pertains to all MFBI's which are currently in, or about to enter, the early planning process, as well as to those MFBI's which have not complied with the February 3, 1977 notice, but upon which the continuing responsibility to file rests.

The purpose of the reporting requirement is to enable DOE to identify MFBI's, including individual combustors, which should be considered for the issuance of Construction Orders pursuant to section 2(c) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, 15 U.S.C. 791 et seq. A Construction Order would require the MFBI to be designed and constructed with the capability of using coal as its primary energy source.

For the purposes of this reporting requirement—

(a) A "combined cycle unit" is an electric power generation unit that consists of a combination of one or more combustion gas turbine units and one or more steam turbine units with the required energy input of the steam turbine(s) provided by and approximately matched to the energy in the exhaust gas from the combustion gas turbine unit(s). Use of small amounts of supplemental firing for the steam turbine does not preclude the unit from being a combined cycle unit;

(b) A "combustion gas turbine unit" is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of a fuel, usually natural gas or a petroleum product, with an electric power generator driven by such engine;

(c) The "foundation" is the base supporting an MFBI consisting of pilings, a concrete pad or an equivalent structure;

(d) A "Major Fuel Burning Installation" is an installation or unit other than a powerplant that has or is a fossil-fuel fired boiler, burner or other combustor of fuel or any combination of combustors at a single site, that has individually or in combination, a design firing rate of 100 million Btu/hr. or greater, and includes any person who owns, leases, operates, controls or supervises any such installation or unit. Combustion gas turbines and combined cycle units are excluded from this classification;

(e) A "powerplant" is a fossil-fuel fired steam electric generating unit that produces electric power for purposes of sale or exchange; and includes any person who owns, leases, operates, controls or supervises any such unit;

(f) A "person" is any association, firm, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any entity however organized, including charitable, educational or other eleemosynary institutions, and the Federal Government, including cooperations, departments, Federal agencies, and other instrumentalities, and state and local governments, and includes any officer, director, owner, or duly authorized representative thereof. DOE may treat as a person:

(1) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls,

(2) A parent and its consolidated entities,

(3) An unconsolidated entity, or

(4) Any part of a person.

(g) The "preliminary feasibility study" is that analysis, formal or otherwise, which concludes that new, additional, or replacement capacity appears to be required and which precedes the managerial decision to initiate the design of an MFBI;

(h) The "reporting interval" is that period which commences upon completion of a preliminary feasibility study for the MFBI and ends upon completion of the foundation for MFBI. If no preliminary feasibility study can be identified, the reporting interval commences at the earlier of 1) the formation of a contract, express or implied, for design of the MFBI, or if such design is not to be performed in accordance with a contract, the date the managerial decision to initiate design work is made, or 2) the approval of construction funds for the MFBI by responsible officials.

(i) The "Report" is Form FEA C-607-S-O, consisting of three parts: Schedules A-1, A-2, and A-3.

(1) Schedule A-1 identifies the responding company and facility. One Schedule A-1 must accompany each submission. If the reporting requirements do not apply to the MFBI at this time, however, only Schedule A-1 is to be completed and filed by the MFBI, indicating this fact.

(2) Schedule A-2 specifically identifies the MFBI and includes such information as combustor designation, combustor capacity and type, i.e. whether it is a boiler, burner or other type of unit, primary energy souce capability, combustor design and construction schedule, and significant impediments to designing and constructing the subject combustor with coal-burning capability.

(3) Schedule A-3 gathers financial and coal availability information pertaining to the specific MFBI. This schedule is not furnished to responding MFBI's with Schedules A-1 and A-2 as it will not be applicable to all responding facilities and will be required to be filed only upon specific DOE request. Forms for filing will be furnished by DOE at the time the request is made, and filing must be accomplished within 30 days after the MFBI's receipt of the request.

Each MFBI which meets the design firing rate requirements (detailed below), which was in the reporting interval as of December 27, 1976 or has thereafter entered the reporting interval, and which has not yet been reported to DOE, is required to file a Schedule A-2 of the Report within 30 days of the date of this notice. Each MFBI which meets the design firing rate requirements and which hereafter enters the reporting interval is required to file a Schedule A-2 of the Report on or before the 15th day of the month subsequent to the month that the reporting interval is entered.

Filing of Schedule A-2 is required if the MFBI has (1) a design firing rate of 100 million Btu/hr. or greater, or (2) a design firing rate of 50 million Btu/hr. or greater and a design firing rate of 100 million Btu/hr. or greater when taken in the aggregate with other combustors at the same location which have design firing rates of 50 million Btu/hr. or greater and which entered the reporting interval on or after December 27, 1976.

If an MFBI enters the reporting interval but does not initially meet the design firing rate requirements on that date, but subsequently meets the design firing rate requirements due to the entrance into the reporting interval of other qualifying MFBI's at the same location, it is required to file the

[1] Effect Oct. 1, 1977, the responsibility for implementing the Energy Supply and Environmental Coordination Act was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act, Pub. L. No. 95-91 (42 U.S.C. 7101).

Report on or before the 15th day of the month subsequent to the month in which it meets such requirements.

If any information previously submitted to DOE, or hereafter submitted to DOE, on FEA Form C-607-S-0, Schedules A-1, A-2, and/or A-3, changes, revised schedules must be submitted to DOE within 30 days of such change.

Copies of the Report, FEA Form C-607-S-0, are available from DOE at the address below. Detailed filing requirements and instructions are contained with the forms.

Completed Reports, requests for forms, and questions should be addressed to: Mrs. Ellen Russell, Division of Coal Utilization, Department of Energy, Room 7202, 2000 M Street NW., Washington, D.C. 20461, telephone 202-254-8310.

Issued in Washington, D.C., on September 14, 1978.

LINCOLN E. MOSES,
Administrator, Energy Information Administration, Department of Energy.

[FR Doc. 78-26344 Filed 9-18-78; 8:45 am]

[3128-01]

Office of Assistant Secretary for International Affairs

PEACEFUL USES OF ATOMIC ENERGY

Proposed Subsequent Arrangement; Government of the United States and the European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under which DOE will enter into contractual arrangements for the furnishing of the following material under the additional agreement for cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning the peaceful uses of atomic energy.

Application No., Countries, and Description of Material

MS—EU—330—91—United States to West Germany—500 mg of uranium containing U-236 (89.2 percent enriched as oxide) to the Max Planck Institute in West Germany where the material will be used as targets for nuclear physical examination.

MS—EU—330—90—United States to Belgium—1 g of plutonium containing Pu-239 (99.1 percent enriched) and 250 mg of plutonium containing Pu-241 (93.22 percent enriched to Bureau Central de Mesures Nucleaires in Geel, Belgium, for use in ternary fission studies, fission fragment, kinetic energy, and mass distribution measurements.

MS—EU—330—89—United States to Belgium—10 g of uranium containing U-235 (99.94 percent enriched); 8 g of plutonium containing Pu-240 (93.3 percent enriched) to the Bureau Central de Mesures Nucleaires in Geel, Belgium, for use as synthetic mixtures in spikes and reference material in mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security of the United States.

These subsequent arrangements will take effect no sooner than October 4, 1978.

Dated: September 13, 1978.

For the Department of Energy.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs, International Programs.

[FR Doc. 78-26272 Filed 9-18-78; 8:45 am]

[3128-01]

Economic Regulatory Administration

RULEMAKING DOCKET SYSTEM

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Rulemaking Docket System.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives notice that it has established a docket system for completed, current and future rulemakings. The system is intended to provide the public with a means of readily identifying completed and current rulemakings and public records related thereto.

Attached as an appendix to this notice is a list of docket numbers of rulemakings that are currently pending before ERA or have been completed by ERA subsequent to activation of the Department of Energy on October 1, 1977. "ERA" in the docket number identifies the rulemaking as being within the jurisdiction and authority of the Economic Regulatory Administration. The letter "R" designates that it is a rulemaking action, and will distinguish it from adjudicatory and other proceedings that will later be incorporated into this docket system. The first digit or set of digits in the docket number refers to the calendar year in which the particular rulemaking was initiated, which in general means the year in which the notice of proposed rulemaking (or notice of inquiry, if that was the initiating document) was published in the FEDERAL REGISTER. The second digit or set of digits in the docket number refers to the sequence in which the document initiating the rulemaking was issued in a particular year.

Thus, "ERA-R-77-2" refers to the second rulemaking initiated in 1977 by ERA (or a predecessor agency).

We have also indicated on the attached list for each docket item the most recent date on which a significant notice (notice of inquiry, notice of proposed rulemaking (NOPR), final rule, etc.) was published in the FEDERAL REGISTER and have indicated those rulemakings which have been completed.

We will periodically publish lists of new docket numbers and indicate the status of all docketed rulemakings.

You may obtain further public information relating to any current rulemaking appearing on the docket list, including copies of rulemaking documents, press releases, and supplementary analyses, if any, by contacting the Public Information Office, Economic Regulatory Administration, Room B-110, 2000 M Street NW., Washington, D.C 20461, telephone 202-634-2170.

Issued in Washington, D.C., September 13, 1978.

DOUGLAS G. ROBINSON,
Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.

APPENDIX

Docket No.	Rulemaking	Publication date of most recent significant notice
ERA-R-76-1	Amendments to the east coast residual fuel oil entitlements program	June 29, 1978 (further NOPR).
ERA-R-77-1	Incentives for tertiary enhanced crude oil recovery	Aug. 1, 1978 (final rule and NOPR).
ERA-R-77-2	Production and sale of imputed stripper well crude oil from unitized properties.	Aug. 1, 1978 (final rule).
ERA-R-77-3	Amendments to allow the allocation of additional increased costs to gasoline.	Feb. 17, 1977 (NOPR).
ERA-R-77-4	Amendments to the entitlements program for crude oil produced in California.	June 29, 1978 (final rule).
ERA-R-77-5	General revision of NGL processors' price regulations	June 9, 1977 (NOPR)
ERA-R-77-6	Amendments to include certain petroleum substitutes in the entitlements program.	May 16, 1978 (final rule and NOPR).

APPENDIX

Docket No.	Rulemaking	Publication date of most recent significant notice
ERA-R-77-7	Motor gasoline decontrol	June 28, 1978 (notice of environmental assessment).
ERA-R-77-8	Crude oil resellers price rule	Dec. 29, 1977 (final rule and NOPR).
ERA-R-77-9	General revision of NGL allocation regulations	August 16, 1978 (FERC notice of hearing).
ERA-R-77-10	Coal conversion (ESECA) program revision	Aug. 31, 1977 (NOPR).
ERA-R-77-11	Special State set-aside procedures for middle distillate	Nov. 18, 1977 (final rule).
ERA-R-77-12	Amendments to the entitlements program relating to naphtha feedstocks imported into Puerto Rico.	Dec. 7, 1977 (final rule).
ERA-R-77-13	Computation of refiners' landed costs: Timing	Feb. 10, 1978 (final rule).
ERA-R-77-14	Canadian allocation and buy/sell program	Feb. 14, 1978 (final rule).
ERA-R-78-1	Revision of remedial order procedural regulations	May 8, 1978 (FERC notice of hearing).
ERA-R-78-2	Entitlements treatment for certain Alaskan refiners	Jan. 30, 1978 (NOPR).
ERA-R-78-3	Small refiner bias	Feb. 10, 1978 (NOI).
ERA-R-78-4	Standby crude oil pricing and allocation regulation	Feb. 15, 1978 (NOPR).
ERA-R-78-5	Kerosene-base jet fuel decontrol	June 27, 1978 (NOPR).
ERA-R-78-6	Aviation gasoline decontrol	Do.
ERA-R-78-7	International oil allocation	Feb. 16, 1978 (NOPR).
ERA-R-78-8	Recordkeeping requirements relating to international voluntary agreements.	Mar. 28, 1978 (final rule).
ERA-R-78-9	Price rules for blends of covered and synthetic products	June 5, 1978 (final rule).
ERA-R-78-10	Procedural regulations for natural gas imports	Sept. 1, 1978 (final rule).
ERA-R-78-11	Fee-free allocations under the mandatory oil import program	May 3, 1978 (final rule).
ERA-R-78-12	Simplified crude oil price control program	Apr. 11, 1978 (NOI).
ERA-R-78-13	Nonrefining uses of old oil	Apr. 21, 1978 (NOI).
ERA-R-78-14	Contingency gasoline rationing program	June 28, 1978 (NOPR).
ERA-R-78-15	Standby product allocation and pricing program	July 10, 1978 (NOPR).

[FR Doc. 78-26242 Filed 9-18-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 970-5]

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Receipt

Pursuant to the President's Reorganization Plan No. 1, the Environmental Protection Agency is the official recipient for environmental impact statements (EIS's) and is required to publish the availability of each EIS received weekly. The following is a list of environmental impact statements received by the Environmental Protection Agency from September 4, 1978 through September 8, 1978. The date of receipt for each statement is noted in the statement summary. Under the Guidelines of the Council on Environmental Quality the minimum period for public review and comment on draft environmental impact statements is forty-five (45) days; the date of submission of comments is October 30, 1978. The thirty (30) day period for each final statement begins the day the statement is made available to the Environmental Protection Agency and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: September 14, 1978.

WILLIAM D. DICKERSON,
Acting Director,
Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, room 412 A, Washington, D.C. 20250, 202-447-4423.

RURAL ELECTRIC ADMINISTRATION

Draft

Cajun electric coal-fired powerplant, Pointe Coupee County, La., September 8, 1978: Proposed is the construction and operation of a new steam electric generating facility by the Cajun Electric Power Cooperative. The project will be located at the Big Cajun No. 2 site, Pointe Coupee Parish, La. The principal features of the project are: (1) a nameplate rating of 565 MW, (2) fuel obtained from two deposits of western sub-bituminous coal, (3) production of 4,300,000 lbs per hour of steam, (4) limit oxides of nitrogen emissions to maximum of 0.7 lbs per million Btu heat input, (5) particulate removal treatment, (6) water supplied from the Mississippi River, (7) tie-in lines from the switchyard to existing distribution systems. (USDA-REA-EIS (ADM)-78-11-D.) (EIS order No. 80987.)

SOIL CONSERVATION SERVICE

Final

Rural clean water program, September 6, 1978: This statement analyzes alternative methods of administration of the rural clean water program (RCWP), which provides financial assistance for implementing plans under the clean water act of 1977. The purpose of RCMP is to control nonpoint sources of pollution on private rural lands. Selected high priority areas will be eligible for special technical assistance and cost-sharing to rural land users applying best management practices to improve water quality. Participation in the program is voluntary. Comments made by: DOC, USDA, EPA, State agencies, groups, individuals and businesses (EIS Order No. 80981.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Edward Vest, Environmental Protection Agency, Region VII, 1735 Baltimore Street, Kansas City, Mo. 64108, 816-374-2921.

Final

Ottumwa Generating Station, NPDES permit, Iowa, September 5, 1978: Proposed is the issuance of a new source NPDES permit for discharge of wastewaters from Iowa Southern Utilities' proposed Ottumwa generating station (OGS). The proposed site for the 727 MW coal-fired steam-electric generating station is located adjacent to the Des Moines River, approximately 8 miles northwest of Ottumwa, Iowa. OGS will utilize a closed-cycle cooling system and will require makeup water at a rate of 17 c.f.s. at maximum load conditions. Total discharge to the Des Moines River is estimated to be 1.4 c.f.s. at maximum load conditions. The Des Moines River will be impacted by water withdrawal and wastewater discharge. (EPA-907/9-78-001.) Comments made by: DOI, DOT, DOC, HUD, State and local agencies, groups, individuals and businesses.) (EIS Order No. 80977.)

Contact: Mr. Jeff Kempter, Environmental Protection Agency, Special Pesticide Review Division (TS-971), 401 M Street SW., Washington, D.C. 20460, 202-755-8053.

Final

Dibromochloropropane, registration cancellation, September 8, 1978: This statement announces the EPA Administrator's intent to cancel the registrations of all dibromochloropropane (DBCP) for a number of vegetables and use restriction of DBCP on certain vegetables and fruits to certified applicators wearing specified pro-

tective equipment. DBCP is widely used by growers to control nematodes on crops and has been found to reduce sperm counts in men exposed to it and has been found to cause cancer in laboratory animals. The Administrator waived all external review of and comment upon the proposed action in accordance with section 6(B) of the Federal Insecticide, Fungicide, and Rodenticide Act. (EIS Order No. 80997.)

Contact: Mr. Wallace Stickney, Environmental Protection Agency, Region I, John F. Kennedy Federal Building, room 2203, Boston, Mass. 02203, 617-223-4635.

Draft Supplement

Wastewater collection and treatment facilities, Dukes County, Mass., September 8, 1978: This statement supplements a draft EIS filed in September 1977, concerning wastewater collection and treatment facilities for Tisbury, Oak Bluffs, and West Tisbury, Dukes County, Mass. The statement considers a construction program of: (1) Wastewater collection facilities in Tisbury, (2) a secondary treatment/nightsoil composting facility on site located between Vineyard Haven and Lake Tashmoo, and (3) implementation of nonstructural measures to improve on-lot wastewater disposal. (EIS Order No. 80993.)

DEPARTMENT OF ENERGY

Contact: Mr. Robert Stern, Office of NEPA Affairs, Department of Energy, 1200 Pennsylvania Avenue NW., room 7119, Washington, D.C. 20461, 202-566-9760.

Draft

230-KV electrical transmission line, Miles City, several counties in Montana, North Dakota, South Dakota, September 6, 1978: Proposed is the construction of a 328-mile, 230kV transmission line between Miles City and Baker, Mont., Hettinger, N. Dak., and New Underwood, S. Dak., in Custer and Fallon Counties in Montana, Adams, Bowman, and Slope Counties in North Dakoka, and Meade, Pennington, and Perkins Counties in South Dakota. Wood-pole, H-frame structures with three conductors and two overhead static wires are planned. Four alternatives are considered which include: (1) Nonconstruction, (2) buried cable, (3) an alternate terminal point at South Dakota end of line, and (4) other potential alternate routes. (DOE/EIS-0025D.) (EIS Order No. 80983.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308

Draft

Three Lakes Subdivision, Harris County, Tex., September 5, 1978: Proposed is the issuance of home mortgage insurance for the Three Lakes Subdivision located in Harris County, Tex. The proposed development plan for the project provides for the construction of approximately 1,665 single-family homes and encompasses approximately 370 acres. This proposal was submitted by Homecraft Land Development, Inc., on behalf of Home Land, Inc. (HUD-RO6-EIS-78-42-D.) (EIS Order No. 80979.)

Westgate Heights Subdivision, Albuquerque, Bernalillo County, N. Mex., September 6, 1978: Proposed is the issuance of home mortgage insurance for the Westgate Heights Subdivision, Albuquerque, Bernalillo County, N. Mex. When completed, the subdivision, which encompasses approximately 904 acres, is expected to consist of single-family, multifamily, and apartment housing units, as well as schools, churches, commercial, park and recreation facilities. The proposal was submitted by the Associated Investment Co. (HUD-RO6-EIS-78-38D.) (EIS Order No. 80980.)

SECTION 104(h)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

Citron-Date housing project, McCully, Honolulu County, Hawaii, September 5, 1978: Proposed is the issuance of block grant funds for the construction of a seven-story multifamily tower over a two-level parking structure, to be known as the Citron-Date housing project located in McCully, Honolulu County, Hawaii. The project will contain 99 units and 107 parking spaces. Three alternatives are considered which include: (1) Retain in present use, (2) develop as higher density residential, (3) develop as single family residential. (EIS Order No. 80978.)

East Temple residential project, Bell County, Tex., September 6, 1978: Proposed is a multiyear project under the community development block grant program located in Temple, Bell County, Tex. The project, to be known as the East Temple residential project, will encompass approximately 115 acres of land, and will consist of the construction of a single-family residential subdivision of about 450 units for low- and moderate-income homebuyers. Also included is the expansion of Wilson Park, and the dedication of right-of-way for the extension of a major thoroughfare. (EIS Order No. 80982.)

Port/Marina project, Richmond, Contra Costa, Calif., September 6, 1978: Proposed is a marina/port development project which encompasses 935 acres within a redevelopment project located in Richmond, Contra Costa County, Calif. The marina portion of the project includes a 2,000-berth marina for small boats; 2,000-4,000 new residential units; new commercial uses; parking; and a significant amount of recreational space. The port element includes construction of one to four container berths; a support area and the interfacing of rail, water, and land transportation. (HUD-RO5.) (EIS Order No. 80984.)

[FR Doc. 78-26353 Filed 9-18-78; 8:45 am]

[6560-01]

[FRL 969-8, OPP-180232]

IDAHO AND WASHINGTON STATE DEPARTMENTS OF AGRICULTURE

Issuance of Specific Exemptions To Use TEPP To Control Twospotted Spider Mite on Hop Crop

The Environmental Protection Agency (EPA) has granted specific exemptions to the Idaho and Washington State Departments of Agriculture (hereafter referred to as "Idaho" and "Washington") to use TEPP (tetraethyl pyrophosphate) for the control of twospotted spider mites which are threatening the commercial hop crop in one county in Idaho and three counties in Washington. These exemptions were granted in accordance with, and are subject to, the provisions of 40 CFR Part 166, which precribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to Idaho and Washington, the twospotted spider mite (*Tetranychus urticae* Koch) is normally present in Idaho and Washington hopyards. Current climatic and growing conditions are ideal for pest population buildup now. Although several miticides are registered for use on hops, Idaho and Washington State University entomologists alleged that none of the registered miticides were viable options for one or more of various reasons: (1) The spider mites were resistant to the other miticides; (2) aerial applications were precluded because of ineffectiveness or labeling restrictions; and/or (3) the required preharvest interval excluded application at the time required. Ground pesticide applications were not feasible because of possible damage to hop foliage, lodged hops, and irrigation equipment. According to Idaho and Washington, TEPP has prevented economic damage to the commercial hop crop by this pest in previous years.

The Washington infestation was to have been controlled by the specific exemption to use Carzol granted earlier this year. However, Washington claimed that sufficient supplies of Carzol were unavailable for the two to three treatments necessary to effect season-long mite control. Thus, the emergency still exists.

Both Idaho and Washington requested permission to use 2 pounds of actual TEPP per acre in a single aerial application. In Idaho, application will be made on 1,000 acres of commercial hops in Canyon County; in Washington, application will be made on 20,000 acres limited to Yakima, Benton, and Pierce Counties.

Idaho stated that potential losses which could result without an effective miticide program could be $1 million. The State of Washington produces about 71 percent of the national

hop crop; Washington stated that the potential economic loss from a major outbreak of the twospotted spider mite could reach $10,000,000, representing one-third of Washington's hop production and 20 percent of the U.S. production.

Idaho and Washington cited the following factors which contribute to relatively low probability of exposure of man to harmful residues of TEPP from hops: (1) Raw hops are never consumed by humans and hops are kiln-dried following harvest; (2) one-fourth pound of hops is added to each 31 gallons of beer, a 1:1,000 dilution by weight; (3) fermentation in the brewing vats results in additional breakdown of pesticide residues; and (4) a 2-pound application on hops presents less residue potential to humans than applications on six other food crops which have tolerances of 0.01 ppm. The dilution of 1 to 1,000 would allow establishment of a tolerance adequate to protect human health. Idaho and Washington further stated that all data reviewed indicated no residue transfer from a 3-day preharvest interval to finished beer.

However, TEPP exhibits acute toxicity to fish and wildlife species, especially avian species. The Office of Endangered Species, U.S. Department of the Interior, has reported that the American peregrine falcon (*Falco peregrinus anatum*), an endangered species, is endemic within the counties proposed for treatment.

After reviewing the applications and other available information, EPA has determined that (a) pest outbreaks of twospotted spider mites have occurred or are about to occur; (b) there is no pesticide presently registered and available for use to control the twospotted spider mite in Idaho and Washington State; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the twospotted spider mites are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, Idaho and Washington have been granted specific exemptions to use the pesticides noted above until September 30, 1978, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following restrictions:

1. Aerial applications of TEPP are limited to one at the rate of 2 pounds of active ingredient per acre;

2. Total acreage treated shall not exceed 1,000 acres in Idaho and 20,000 acres in Washington;

3. A maximum of 2,000 pounds of actual TEPP may be applied in Idaho and a maximum of 40,000 pounds of actual TEPP may be applied in Washington;

4. A 3-day preharvest interval will be observed;

5. Treatment area is limited to the three counties in Washington and the one county in Idaho listed in this notice;

6. Idaho and Washington are responsible for monitoring the aerial applications of TEPP in their respective States;

7. Liaison shall be established between the Idaho Departments of Agriculture and Fisheries and Game and the Washington State Departments of Agriculture and Fisheries and Game in their respectives States to minimize any adverse effects on fish and wildlife resources:

8. The EPA shall be immediately informed of any adverse effects resulting from the use of this pesticide in connection with these exemptions;

9. All applicable directions, restrictions, and precautions on the EPA-registered label will be observed;

10. All precautions will be taken to avoid or minimize spray drift to nontarget areas;

11. Hops with residue levels not exceeding 0.1 ppm of TEPP may be offered in interstate commerce. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action;

12. If the twospotted spider mite is likely to continue to be a pest of hops in Idaho and Washington, these States and their concerned growers must pursue tolerances for TEPP and/or Carzol through regular channels; and

13. Idaho and Washington must submit final reports on their respective programs to EPA by September 30, 1979.

(Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).)

Dated: September 12, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-26230 Filed 9-18-78; 8:45 am]

[6560-01]

[FRL 969-7; OPP-180231]

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Issuance of a Specific Exemption To Use Cyhexatin To Control Twospotted Spider Mites

The Environmental Protection Agency (EPA) has granted a specific exemption to the New Jersey Department of Environmental Protection (hereafter referred to as the "Applicant") to use cyhexatin (tricyclohexyltin hydroxide) on 1,200 acres of eggplants to control twospotted spider mites (*Tetranychus urticae*) in New Jersey. This exemption was granted in accordance with, and is subject to, provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the Applicant, twospotted mites cause considerable damage to the eggplant crop; mites pierce the leaf epidermis with their mouth parts and suck sap, initially causing the leaf to appear stippled with yellow spots. Heavy infestations result in yellow-colored leaves that eventually become nonproductive and drop from the plant causing loss in plant vigor and crop yield reduction. Hot and dry weather accelerates mite buildup.

According to the Applicant, mite resistance to EPA-registered products, such as ethion, naled, malathion, and mevinphos, has caused these products to be ineffective. The Applicant further claims that although carbophenothion and oxydemetonmethyl are EPA-registered and somewhat effective, the preharvest interval of 7 days is incompatible with harvesting every 3 to 4 days.

Based on 1977 data, the Applicant reports that growers experienced an economic loss of $225 per acre on acreage where mite control was not practiced. Although with currently EPA-registered miticides the loss may be reduced by 50 percent, the Applicant feels that the use of cyhexatin may reduce losses to a very low level.

The Applicant proposes to use a maximum of 3,840 pounds of Plictran 50W Miticide, a cyhexatin formulation manufactured by Dow Chemical Co., EPA Reg. No. 464-363. State-certified private or commercial applicators will make a maximum of four applications by air or ground at a rate of 0.4-pound active ingredient (a.i.) per acre on a maximum of 1,200 acres.

EPA has found that adequate data are available to support the request. Permanent tolerances for cyhexatin have been established in a range from 0.05 part per million (ppm) to 60 ppm. Residue data indicate that residues of cyhexatin and its organotin metabolite under this use would not be expected to exceed 0.5 ppm. EPA has imposed a 3-day preharvest interval.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of

twospotted spider mites on eggplants has occurred or is likely to occur; (b) resistance has developed to the pesticides presently registered and available for use to control this pest in New Jersey; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if these mites are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until October 1, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Plictran 50W Miticide, EPA Reg. No. 464-363, manufactured by Dow Chemical Co., is authorized;

2. Applications may be made by ground or air at a rate of 0.4 pound cyhexatin per acre;

3. A maximum of 1,200 acres of eggplant crop may be treated;

4. A maximum of 3,840 pounds Plictran 50W may be applied;

5. A maximum of four applications may be made and a preharvest interval of 3 days must be observed;

6. Applications shall be made by State-certified private or commercial applicators;

7. A residue level of cyhexatin not exceeding 0.5 ppm in or on eggplants has been determined as adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

8. All label precautions shall be followed;

9. The EPA shall be informed immediately of any adverse effects to man or the environment resulting from this use;

10. The Applicant shall be responsible for insuring that all provisions of this specific exemption are followed; and

11. A final report summarizing the results of this program shall be submitted to EPA by December 31, 1978.

(Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).)

Dated: September 12, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-26231 Filed 9-18-78; 8:45 am]

[6560-01]

[FRL 969-6; OPP-180230]

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND VIRGINIA DEPARTMENT OF AGRICULTURE AND COMMERCE

Issuance of Specific Exemptions To Use Botran 75W To Control Sclerotinia Blight of Peanuts

The Environmental Protection agency (EPA) has granted specific exemptions to the North Carolina Departmnent of Agriculture and the Virginia Department of Agriculture and Commerce (hereafter referred to as "North Carolina" and "Virginia") to use Botran 75W for the control of *Sclerotinia* blight on 53,000 acres of peanuts in North Carolina and on 52,000 acres of peanuts in Virginia. These exemptions were granted in accordance with, and are subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the applications on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to North Carolina and Virginia, the *Sclerotinia* blight which is caused by the plant pathogen *Sclerotinia sclerotiorum* (syn. *S. minor*) is a relatively new disease on peanuts in the United states, being first reported in 1971. *S. Sclerotiorum* invades the taproot, lateral branches, and pegs at the soil ine and eventually causes rotting of the peanut pods. Losses in yield in excess of 50 percent have been reported in North Carolina and Virginia due to this pathogen, the applicants stated. In Virginia, the applicant stated that nine major peanut-growing counties located in the southeastern part of the State are likely to be subject to infection by this pest. The total acreage in these counties is 104,000; however, only 50 percent (52,000) of this acreage has been designated for treatment.

There are no EPA-registered fungicides for the control of *S. sclerotiorum* on peanuts. Several fungicides have been tested and shown to be effective for the control of *Sclerotinia* blight on peanuts. Pentachloronitrobenzene (PCNB) when used at maximal label rates did control *S. sclerotiorum* in some instances, but not in others. Multiple applications of Benomyl also provided adequate control. Neither of these fungicides is registered although PCNB has a registration for peanut pod rot complex. For the control of this pest, Botran 75W was chosen by North Carolina and Virginia because it was considered to be most efficacious for control of *S. sclerotiorum*. In addition, Botran 75W is registered for the control of *Sclerotinia* on several vegetable crops (beans, celery, cucumbers, lettuce, onions, and potatoes).

North Carolina will use Botran 75W (EPA Reg. No. 1023-36), containing the active ingredient 2,6-dichloro-4-nitroaniline, once at a dosage rate of 4 to 5 pounds of product per acre or twice at a dosage rate of 2.66 pounds of product per acre. If two applications are made, they will be made 10 to 14 days apart. Applications of Botran will be made by peanut growers. The diagnosis of this plant pathogen must be made before Botran 75W is applied. The product should be applied in 30 to 50 gallons of water over the row using a flat-type spray nozzle (floodjet nozzle or equivalent) that produces large droplets rather than a mist and with a pressure high enough to drive the chemical to the soil surface. Thorough coverage of the peanut plant and soil is essential. Copies of this procudure will be furnished to dealers marketing Botran.

Virginia proposes essentially the same program as North Carolina on a total of 52,000 acres in the following counties: Brunswich, Dinwiddie, Greenville, Isle of Wight, Prince George, Southampton, Suffolk City, Surry, and Sussex. If split applications are made in Virginia, they will be at a dosage rate of 2 to 2.5 pounds of product in 25 to 50 gallons of water.

North Carolina estimates that yield losses can be reduced by 60 to 75 percent with proper application of Botran 75W. In 1976, North Carolina estimated losses due to *S. sclerotiorum* at $1.8 million; in 1977 at $450,000. Virginia estimates that peanut yield losses of $3 million could occur without a suitable control program.

This use of Botran 75W will not pose a threat to the public health, since the residue expected to occur on peanut meat and hulls (less than 0.1 part per million (ppm)) is insignificant. It is recommended that treated peanut vines or hay should not be used as livestock feed items.

After reviewing the applications and other available information, EPA has determined that (a) pest outbreaks of *Sclerotinia* blight have occurred or are about to occur in North Carolina and Virginia; (b) there is no pesticide presently registered and available for use to control this pest in North Carolina and Virginia; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the pest is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this

use. Accordingly, North Carolina and Virginia have been granted specific exemptions to use the pesticide noted above until September 30, 1978, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the folowing conditions:

1. Botran 75W (EPA Reg. No. 1023-36) may be applied either at a dosage rate of 4 to 5 pounds of product (3 to 3.75 pounds active ingredient) per acre or as a split application, 10 to 14 days apart at a dosage rate in North Carolina of 2 to 2.66 pounds of product (1.5 to 2.0 pounds active ingredient) per acre and in Virginia at a dosage rate of 2.25 pounds of product (1.5 to 1.88 pounds active ingredient) per acre. The product should be applied in North Carlina in 30 to 50 gallons of water and in Virginia in 25 to 50 gallons of water over the row using a flat-type spray nozzle that produces large droplets rather than a mist and with sufficient pressure to drive the fungicide to the soil surface;

2. Fifty-three thousand acres of peanuts located in the North Carolina coastal plain and 52,000 acres of peanuts in the Virginia counties previously listed may be treated;

3. Applications may be made by peanut growers;

4. The use of Botran 75W in conjunction with these specific exemptions is authorized only when personnel of the North Carolina Department of agriculture or county extension personnel in North Carolina, or personnel of the Virginia Cooperative Extension Service in Virginia determine the presence of *Sclerotinia* blight in a given growing area;

5. The North Carolina Extension Service recommendations and the Virginia Cooperative Extension Service recommendations concerning application methods and equipment must be made available to growers in the respective States;

6. A residue level of 2,6-dichloro-4-nitroaniline in or on peanut meat and hulls not exceeding 0.1 ppm has been deemed adequate to protect the public health. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare, has been advised of this action;

7. Botran-treated peanut vines or hay must not be used as livestock feed items. A minimum preharvest interval of 30 days must be observed;

8. Botran 75W is toxic to fish. Care must be taken to prevent contamination of water by cleaning of equipment or disposal of waste or containers. It may not be applied under conditions favoring sheet runoff;

9. All label directions, precautions, and restrictions must be adhered to;

10. The EPA shall be immediately informed of any adverse effects resulting from the use of Botran 75W in conjunction with these exemptions; and

11. North Carolina and Virginia are each required to submit a full report summarizing the results of this program in their respective States to the EPA by March 31, 1979.

(Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: September 12, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-26232 Filed 9-18-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, PR. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, by October 9, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-3708.

Filing party: A. J. Boyle, Vice President, International Terminal operating Co. Inc., 17 Battery Place, New York, N.Y. 10004.

Summary: Agreement No. T-3708, between I.T.O. Corp. of Baltimore (ITO) and Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Line, Ltd., Nippon Yusen Kaisha and Yamashita-Shinnihon Steamship Co. Ltd. (the Lines), is a renewable, 1-year container terminal stevedore and LCL service agreement. The agreement provides that ITO will furnish the Lines terminal, stevedore, and container freight station services in connection with the Lines' containerships calling at Dundalk Marine Terminal, Baltimore, Md. The Lines will compensate ITO in accordance with a schedule of rates agreed upon by both parties and filed with the Federal Maritime Commission.

By order of the Federal Maritime Commission.

Dated: September 14, 1978.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc. 78-26345 Filed 9-18-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

NEWMAN BANCSHARES, INC.

Formation of Bank Holding Company

Newman Bancshares, Inc., Tuscola, Ill., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 94 percent of the voting shares of First State Bank of Newman, Newman, Ill. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than October 11, 1978.

Board of Governors of the Federal Reserve System, September 12, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-26259 Filed 9-18-78; 8:45 am]

[6210-01]

NORTH KOSSUTH INVESTMENT CO.

Formation of Bank Holding Co.

North Kossuth Investment Co., Swea City, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent of the voting shares of Swea City State Bank, Swea City, Iowa. The fac-

tors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve bank, to be received not later than October 5, 1978.

Board of Governors of the Federal Reserve System, September 12, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-26258 Filed 9-18-78; 8:45 am]

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on September 13, 1978. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC, FTC, and NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before October 10, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review staff, 202-275-3532.

FEDERAL COMMUNICATIONS COMMISSION

The FCC requests clearance of revisions to form P, Annual Report of Miscellaneous Common Carriers. Form P is used for obtaining operating and financial data from miscellaneous and specialized common carriers. Due to the recent expansion of the microwave radio service brought about by the entry of the specialized carriers, a revision to form P was found to be necessary. The form is being revised to permit more detailed breakdowns of the carriers' assets structure, revenues, expenses, and returns and also to bring the form into conformity with generally accepted accounting practices and with systems of accounts now applied to the telecommunications industry. The form is required by sections 219(a), 303(j), 303(r), and 308(b) of the Communications Act of 1934, as amended, and sections 1.785, 21.3000, and 43.21 of the FCC rules and regulations. The FCC estimates approximately 100 respondents will complete the report and that respondent burden will average 15 hours per response.

FEDERAL TRADE COMMISSION

The FTC requests clearance of a new, voluntary, single-time questionnaire to be sent to 20,000 households in 24 States who participate in the Market Facts Consumer Mail Panel. The questionnaire will gather information to assist the Commission in making policy decisions related to the duplication of eyeglass lenses. Questionnaires will be sent to individuals who wear eyeglasses to determine if, when, and why they had a lens or pair of lenses duplicated and dates of eye examinations. The FTC estimates respondent burden will average 10 minutes per questionnaire.

The FTC requests clearance of a new, voluntary, single-time questionnaire to be sent to 10,000 households who participate in the market facts consumer panel. The questionnaire will gather information to assist the Commission in making policy decisions related to contact lenses. Questionnaires will be sent to current and former users of contact lenses to obtain information on costs to consumers, source of purchase, and for former users, the reason for no longer wearing contact lenses. The FTC estimates respondent burden will average 10 minutes per questionnaire.

The FTC requests clearance of a new, voluntary, single-time questionnaire to be sent to 14,000 households who participate in the market facts consumer mail panel. The questionnaire will gather information for the purpose of assessing the impact of corrective advertising for Listerine brand mouthwash. Questionnaires will be sent to the mail panel to ascertain their beliefs and usage patterns of several brands of mouthwash. The FTC estimates respondent burden will average 20 minutes per questionnaire.

NUCLEAR REGULATORY COMMISSION

The NRC requests clearance of revisions to 10 CFR Part 20, Personnel Exposure and Monitoring Reports, specifically sections 20.407 and 20.408. The revision to section 20.407(a) will require each person described in section 20.408 to submit within the first quarter of each calendar year reports covering the preceding calendar year containing the total number of individuals for whom personnel monitoring was required during the calendar year. Section 20.407(b) will require a statistical summary report of the personnel monitoring information recorded by the licensee for individuals for whom personnel monitoring was either required or provided, as described in paragraph (a) of this section, indicating the number of individuals whose total whole body exposure recorded during the previous calendar year was in each of certain specified exposure ranges. Section 20.408 has been revised only to specify the four categories of licensees required to report. The NRC estimates that in addition to the 450 licensees currently required to report under these sections, respondents will now include 8,200 additional licensees for a period of 2 years and reporting burden will average 1.4 hours per annual report.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-26323 Filed 9-18-78; 8:45 am]

[4110-92]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Federal Council on the Aging

LONG-TERM CARE COMMITTEE

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress, on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app. 1, sec. 10, 1976) that the Council's Committee on Long Term Care will hold a meeting on Friday, October 13, from 9:30 a.m. to 5 p.m., in Room 4254, HEW North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

The agenda will consist of consideration of mandated studies and followup of the Committee's recommendations to the Council on the Development of policy alternative for long-term care.

Further information on the Council may be obtained from the FCA Secretariat, Federal Council on the Aging, Washington, D.C. 20201, telephone

202-245-0441. FCA meetings are open for public observation.

NELSON H. CRUIKSHANK,
Chairman, Federal Council on the Aging.

SEPTEMBER 13, 1978.

[FR Doc. 78-26260 Filed 9-18-78; 8:45 am]

[4110-03]

Food and Drug Administration

[Docket No. 77N-0437; DESI Nos. 9149, 11020, 11127, and 12486]

PHYSICIAN LABELING FOR ANTIPSYCHOTIC DRUGS

Extension of Time for Comments on Precaution Statement

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice extends the comment period announced in a previous FEDERAL REGISTER notice in order to permit sufficient time for all interested persons to submit comments on the proposed precaution statement for certain antipsychotic drugs and on the design and initiation of epidemiological studies of them.

DATE: Comments by October 18, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with docket No. 77N-0437, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Written comments to Ann Greenstein, Division of Neuropharmacological Drug Products (HFD-120), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 18, 1978 (43 FR 36696), the Director of the Bureau of Drugs proposed that the physician labeling for antipsychotic drugs, except for lithium carbonate, be revised to include under the precaution section the following statement:

"The chronic administration of antipsychotic drugs in rodents induces the development of mammary neoplasms under the appropriate experimental conditions. These drugs elevate prolactin levels in both animals and man, but the role of prolactin in human mammary tumorigenesis is uncertain. Studies conducted to date have not shown an association between chronic administration of antipsychotic drugs and mammary tumors in human beings, but the available evidence is considered too limited to be conclusive at this time. Inasmuch as a fraction of human breast tumors appears to be prolactin-dependent, periodic breast examinations are advised, especially in patients with a previously detected breast cancer or in those with a strong family history of breast cancer."

Interested persons were invited to submit comments by September 18, 1978, on the proposed statement, and on the design and initiation of epidemiological studies involving the chronic administration of these drugs.

The Food and Drug Administration has received a request from the Pharmaceutical Manufacturers Association to extend the comment period to October 18, 1978. The request argues that the comment period ending on September 18, 1978, does not provide its member companies sufficient time to analyze the action proposed by FDA and to submit comments.

The Director of the Bureau of Drugs is concerned that all interested persons have sufficient time to analyze the proposal and submit well-documented comments. Thus, he hereby extends the comment period to October 18, 1978.

Dated: September 13, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-26363 Filed 9-18-78; 8:45 am]

[4110-08]

National Institutes of Health

REPORT ON BIOASSAY OF ESTRADIOL MUSTARD FOR POSSIBLE CARCINOGENICITY

Availability

Estradiol mustard (CAS 22966-79-6) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay of the experimental anticancer drug estradiol mustard for possible carcinogenicity was conducted by administering the chemical by gavage to Sprague-Dawley rats and B6C3F1 mice.

Groups of 35 rats and 34-36 mice of each sex were administered estradiol mustard at one of the following doses, either 0.62 or 1.25 mg/kg body weight for rats and either 15 or 30 mg/kg body weight for mice. The vehicle used for the test chemical consisted of 0.05 percent polysorbate 80 in phosphate-buffered saline. The rats and mice were dosed three times per week for 52 weeks, then observed for an additional 30-34 weeks. Controls consisted of groups of 10 rats and 15 mice of each sex that were not administered the chemical (untreated controls) and also of groups of 10 rats of each sex, 14 male mice, and 16 female mice administered the vehicle alone (vehicle controls). Pooled controls were also used. All surviving rats were killed at 84-86 weeks and all surviving mice at 82-86 weeks.

Mean body weights of male rats and male and female mice administered estradiol mustard were lower throughout the greater part of the study than those of corresponding vehicle or untreated controls; mean body weights of dosed female rats were unaffected. Administration of the test chemical had no significant effect on the survival of either male or female rats. A large number of dosed mice died prior to the end of the study. The numbers of dosed male mice which were at risk as long as 52 weeks were sufficient, however, for development of tumors appearing up to that time. Time-adjusted analysis and life-table analyses were applied to data obtained with the mice.

It is concluded that under the conditions of this bioassay, estradiol mustard administered in a buffered saline vehicle was not carcinogenic in Sprague-Dawley rats. Estradiol mustard was carcinogenic in both male and female B6C3F1 mice, inducing lymphoma, sarcoma of the myocardium, elveolar adenoma, or carcinoma, and squamous-cell carcinoma of the stomach.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: August 18, 1978.

THOMAS E. MALONE,
Ph. D., Acting Director, National Institutes of Health.

[FR Doc. 78-26175 Filed 9-18-78; 8:45 am]

[4110-08]

REPORT ON BIOASSAY OF ICRF-159 FOR POSSIBLE CARCINOGENICITY

Availability

ICRF-159 (CAS 21416-87-5) has been tested for cancer-causing activity with rats and mice in the Carcinogene-

sis Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay of the experimental anticancer drug ICRF-159 for possible carcinogenicity was conducted by administering the compound by intraperitoneal injection to Sprague-Dawley rats and B6C3F1 mice.

Groups of 35 rats and 35 mice of each sex were injected three times per week with ICRF-159 in buffered saline at one of the following doses, either 48 or 96 mg/kg body weight for the rats and either 40 or 80 mg/kg body weight for the mice. Both rats and mice were dosed for 52 weeks, then observed for 29–34 additional weeks. Untreated-control and vehicle-control groups each consisted of 10 rats and 15 mice of each sex; pooled-control groups consisted of the 10 vehicle controls of each sex of the rats combined with 30 vehicle controls of each sex of rats from similar bioassays of three other chemicals and the 15 vehicle controls of each sex of the mice combined with 30 vehicle controls of each sex of mice from similar bioassays of two other chemicals. All surviving rats were killed at 81–86 weeks; all surviving mice, at 86 weeks.

Mean body weights were depressed in rats and mice administered ICRF-159, and mortality was dose related among male and female rats and male mice. The high mortality among the male rats may have been associated with inflammatory lesions observed in the lungs, the liver, and the pleural and peritoneal cavities. Sufficient numbers of female rats and of both male and female mice were at risk for development of late-appearing tumors. In the male rats, time-adjusted analysis of the incidence of tumors was used for determining statistical significance.

It is concluded that under the conditions of this bioassay, ICRF-159 was carcinogenic for female Sprague-Dawley rats, producing uterine adenocarcinomas, and was also carcinogenic for female B6C3F1 mice, producing lymphomas.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: August 18, 1978.

THOMAS E. MALONE, PH.D.,
Acting Director,
National Institutes of Health.

[FR Doc. 78-26174 Filed 9-18-78; 8:45 am]

[4110-08]

REPORT ON BIOASSAY OF TRIMETHYLPHOSPHATE FOR POSSIBLE CARCINOGENICITY

Availability

Trimethylphosphate (CAS 512-56-1) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassy of trimethylphosphate for possible carcinogenicity was conducted by administering the compound by gavage to Fischer 344 rats and B6C3F1 mice.

Groups of 50 rats and 50 mice of each sex were administerd trimethylphosphate in distilled water three times per week at one of two doses, either 50 or 100 mg/kg body weight for the rats and either 250 or 500 mg/kg body weight for the mice. Vehicle controls consisted of groups of 20 rats and 20 mice of each sex. The rats were dosed for 104 weeks and the mice for 103 weeks. All surviving rats were killed at week 105 and all surviving mice at week 103.

Mean body weights of dosed male and female rats and female mice were slightly lower than those of the corresponding vehicle controls throughout the study; mean body weights of the male mice were comparable to those of the vehicle controls. Survival rates of both rats and mice were high, and adequate numbers of animals were at risk for the development of later-appearing tumors.

It is concluded that under the conditions of this bioassay, trimethylphosphate was carcinogenic in female B6C3F1 mice, inducing adenocarcinomas of the uterus/endometrium. Trimethylphosphate was associated with the induction of benign fibromas of the subcutaneous tissue in male Fischer 344 rats. No evidence of carcinogenicity of the compound was obtained in female rates or in male mice.

Single copies of the report are available form the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: August 18, 1978.

THOMAS E. MALONE,
Ph. D., Acting Director,
National Institutes of Health.

[FR Doc. 78-26176 Filed 9-18-78; 8:45 am]

[4110-85]

Public Health Service

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HA (Office of the Assistant Secretary for Health) of the statement of organization, functions, and delegations of authority (38 FR 18571, July 12, 1973, as amended by 42 FR 61317, December 2, 1977, and most recently amended by 43 FR 33965, August 2, 1978) is amended to reflect a relocation of the Office of Health Maintenance Organizations (OHMO) from the Office of Health Programs to a staff office reporting directly to the Assistant Secretary for Health in order to provide additional emphasis and visibility. Also, reflected is a reorganization of OHMO in order to facilitate the development and expansion of health maintenance organizations (HMO's) as a desirable alternative for health care services delivery.

Under Section HA-10 Organization, add Office of Health Maintenance Organizations (HA2) as item 11, and renumber items 11, 12, and 13 to read 12, 13, and 14, respectively.

Under Section HA-20 Functions, change the code designation of Office of Health Maintenance Organizations from "(HAS4)" to "(HAS2)"; remove the current functional statement for the Office of Health Maintenance Organizations (HA2) and place after the Office on Smoking and Health (HAG). Delete in their entirety, the functional statements for the Division of Health Maintenance Organizations Development (HAS41) and the Division of Health Maintenance Organizations Qualification and Compliance (HAS42).

Insert the following statements after the Office of Health Maintenance Organizations (HA2):

Office of Program Support (HA2-1). (1) Plans, organizes, and directs a comprehensive program of general administrative, fiscal, and related management services, including the formulation and implementation of management policies, procedures, systems, and practices; (2) manages, coordinates, and implements for the central and regional offices all phases of the budget formulation, presentation, and execution process, and prepares budget plans and advice of allowances for grants and direct operations; (3) interprets fiscal directives from Congress and HEW as they affect OHMO; (4) coordinates OHMO personnel activities for civil service and commissioned corps personnel, including special consultant and expert activities; (5) provides correspondence management for control of written communi-

cations and action documents, including substantive policy review and followup to insure timely and appropriate action and clearances; (6) tracks and reports on progress in meeting program objectives; (7) manages the administrative aspects of OHMO contract activities; and (8) develops and monitors manpower management and work planning systems for the HMO central office staff.

Division of Development (HA21). (1) Encourages the development and expansion of HMO's, in coordination with the Division of Program Promotion, by providing and monitoring grants, contracts, loans, and loan guarantees to public, nonprofit, and private entities to pursue HMO planning and development activities; provides advice and assistance as needed to HMO's and entities seeking HMO status to enhance developmental activities; (2) establishes standards and procedures for HMO grant reviews and awards; (3) establishes standards and procedures for all loan applications, awards, and reviews; (4) directs and coordinates the HMO grant and loan management activities in the headquarters/regional offices; (5) conducts regular analyses for adequacy of developmental activities for individual HMO projects and prepares quarterly reports projecting the potential for success of developmental activities for budget planning purposes; (6) analyzes needs and develops forecasts for the national grant and loan/loan guarantee programs; and (7) performs congressional, HEW, and other intergovernmental liaison related to development activities.

Division of Qualification (HA22). (1) Establishes qualification standards, and determines the acceptability of entities seeking to become "qualified HMO's"; (2) refines review procedures as necessary to facilitate the qualification process; (3) coordinates and insures consistency of regional office activities related to the qualification process; (4) assists the Office of the General Counsel in the development of legal actions concerning HMO qualification status; (5) performs congressional, HEW, and other intergovernmental liaison related to qualification activities; (6) provides technical assistance to HMO's developed through public and private resources, in the fields of medical care organization, quality assurance, financial management, marketing, legal assistance, and health care administration; (7) develops policy and regulations related to HMO qualification; (8) evaluates impact of policies, legislation, and regulation on ability of projects to become qualified; and (9) provides guidance as to interpretation of policy guidelines and regulations related to qualification.

Division of Program Promotion (HA23). (1) Develops national promotion strategies and provides assistance to Federal, State, public, and private agencies and organizations to encourage the identification of potential areas for HMO development; (2) analyzes national needs to assess potential HMO development geographically and by sponsor; (3) generates an annual national HMO report to Congress; (4) coordinates Federal promotional activities with national professional and trade organizations, and business and labor communities to promote effective joint actions beneficial to HMO development; (5) develops, edits, and evaluates promotional educational and guidance materials and information pertinent to communicating and understanding HMO concepts, operations, and performance; (6) coordinates publication and distribution of public information materials and reports; and (7) coordinates promotional activities performed by regional offices.

Division of Compliance (HA24). (1) Assures the continuing compliance of HMO's with the statutory requirements of the HMO law; (2) assures compliance by employers with a mandatory offering of the HMO alternative in employee health benefits plans; (3) assists the Office of the General Counsel in the development of legal actions against HMO's and employers considered not to be in compliance with applicable standards and regulatory requirements; (4) reviews standards, procedures, and reporting requirements for monitoring of HMO's that receive financial assistance under grants, loans, and loan guarantees; (5) establishes and updates standards and procedures for compliance monitoring of qualified HMO's, and prepares status reports for internal and external use; (6) assures consistency of regional office activities related to compliance monitoring; (7) assures compliance by loan recipients with the legislative requirement for fiscal viability; (8) utilizes computerized data systems to maintain and monitor national HMO activity and statistics; (9) establishes and maintains liaison with concerned State and local regulatory and monitoring agencies; (10) provides technical assistance to qualified HMO's developed through public and private resources, in the fields of medical care organization, quality assurance, financial management, marketing, legal assistance, and health care administration; (11) develops policy and regulaions related to HMO compliance; (12) evaluates impact of policy; legislation, and regulation on ability of qualified HMO's to remain in compliance; and (13) provides guidance as to interpretation of policy guidelines and regulations related to HMO compliance.

Dated: September 8, 1978.

LEONARD D. SCHAEFFER,
Assistant Secretary for Management and Budget.

[FR Doc. 78-26226 Filed 9-18-78; 8:45 am]

[4110-12]

Office of the Secretary

NATIONAL CONFERENCE ON HEALTH RESEARCH PRINCIPLES

Meeting

Notice is hereby given of the National Conference on Health Research Principles to be held on October 3-4, 1978, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md.

The National Conference is part of a new open process which has been initiated by the Secretary of Health, Education, and Welfare, and which is designed to solicit public advice in developing principles of a multiyear strategy to guide DHEW health research activities. All agencies engaging in health research within the Department, the Office of the Assistant Secretary for Health, and other Department staff offices are involved in the Secretary's initiative. The Director of the National Institutes of Health has been asked to take the lead in coordinating this effort.

Approximately 1,000 professional societies and health organizations as well as other Federal departments and agencies have been asked for their suggestions on the principles the Department should adopt. The comments received from the health community, the public, and other Federal agencies have been considered in formulating a statement of proposed DHEW health research principles to be presented to the National Conference.

The Conference will be open to the public and will serve both as a forum to elicit additional public advice and to revise the proposed DHEW principles based on a consideration of oral and written public testimony. The Conference will be structured around five major areas: Fundamental research, clinical applications and health services research, health regulation and promotion, research capability, and unifying concepts. Five panels will receive and consider testimony from preregistered witnesses on these five focuses. There will be two brief plenary sessions to open and close the Conference. Attendance by the public will be limited by the space available. The Conference will result in a draft report of health research principles for the Department. This report will be distributed widely for public comment

and will form the basis for the later development of a multiyear strategy for health research in the Department.

Members of the public are invited to provide written comments on the statement of proposed DHEW health research principles which will be available in mid-September. Comments received by September 29 will be considered during the Conference. Written comments received after September 29 will be incorporated as part of the public record and considered during subsequent stages of the process. Individuals who wish to receive a copy of the statement of proposed DHEW health research principles for purposes of providing written comments or who want further information on Conference arrangements may write or telephone Mr. Kurt Habel, Office of the Director, National Institutes of Health, Building 1, Room 205, Bethesda, Md. 20014, 301-496-1454.

Dated: September 11, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

[FR Doc. 78-26261 Filed 9-18-78; 8:45 am]

[4110-35]

Health Care Financing Administration

PHARMACEUTICAL REIMBURSEMENT BOARD

Proposed MAC's and Announcement of Public Hearing

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Correction of notice.

SUMMARY: In FR document No. 78-24487, appearing in the FEDERAL REGISTER on August 31, 1978, at page 38941, an error occurred in the proposed Maximum Allowable Cost (MAC) limit on amoxicillin oral suspension 250mg/5cc. The proposed limit should read $.0465 instead of $.0461.

FOR FURTHER INFORMATION CONTACT:

Peter Rodler, Executive Secretary, Pharmaceutical Reimbursement Board, 3076 Switzer Building, 330 C Street SW., Washington, D.C. 20201, 202-472-3820.

Dated: September 15, 1978.

PETER RODLER,
Executive Secretary Pharmaceutical Reimbursement Board.

[FR Doc. 78-26465 Filed 9-18-78; 10:27 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-78-533]

ASSISTANT SECRETARY FOR NEIGHBORHOODS, VOLUNTARY ASSOCIATIONS AND CONSUMER PROTECTION

Delegation of Authority

AGENCY: Department of Housing and Urban Development.

ACTION: Delegation of authority.

SUMMARY: The Secretary is delegating to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection all of her authority under the Lead Based Paint Poisoning Prevention Act, except the Secretary's authority with respect to research, which shall be exercised by the Assistant Secretary for Policy Development and Research in consultation with the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

EFFECTIVE DATE: September 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Rebecca Johnson, Office of the Deputy Assistant Secretary for Regulatory Functions, Department of Housing and Urban Development, Room 3234, Washington, D.C. 20410, telephone 202-755-6526.

SUPPLEMENTARY INFORMATION: Under sections 301, 302, and 401 of the Lead Based Paint Poisoning Prevention Act, as amended, 42 U.S.C. 4801 et seq., the Secretary of Housing and Urban Development is required to carry out research to determine the nature and extent of lead paint poisoning in the United States, to establish procedures to eliminate the hazards of lead-based paint poisoning in certain existing housing, and to take steps and to impose such conditions as may be necessary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance. The primary responsibility for this program has to date been vested in the Assistant Secretary for Policy Development and Research.

With the establishment of the Office of the Deputy Assistant Secretary for Regulatory Functions under the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, the Secretary has determined that the responsibility for assuring the implementation of the requirements of the Act should be carried out by the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection. However, since research remains a major function of the Secretary under the Act, and since all research done by the Department of Housing and Urban Development is carried out under the auspices of the Assistant Secretary for Policy Development and Research, the Secretary has determined that the responsibility for carrying out required research shall be vested in the Assistant Secretary for Policy Development and Research in consultation with the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

Accordingly, the Secretary delegates authority as follows:

SECTION A. *Authority delegated.* The Secretary delegates to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection all of her power and authority under the Lead Based Paint Poisoning Prevention Act, as amended, 42 U.S.C. 4801 et seq., except that the Secretary directs that her authority under section 301(a) of the Act, 42 U.S.C. 4821(a) shall be exercised by the Assistant Secretary for Policy Development and Research, in consultation with the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

SEC. B. *Authority excepted.* The power to sue and be sued is excepted from the authority delegated under section A.

SEC. C. *Authority to redelegate.* The Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection is authorized to redelegate to employees of the Department and to agents of the Department any of the power and authority delegated under section A of this delegation except the power to issue rules and regulations.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Issued at Washington, D.C., September 11, 1978.

PATRICIA ROBERTS HARRIS,
Secretary of Housing and Urban Development.

[FR Doc. 78-26255 Filed 9-18-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 34437 and 34495]

NEW MEXICO

Applications

SEPTEMBER 8, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as

amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for two 4½ inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 7 W.,
Sec. 17, lots 4, 8 and NE¼SE¼.
T. 31 N., R. 10 W.,
Sec. 34, lot 7.

These pipelines will convey natural gas across 0.475 of a mile of public lands in Rio Arriba and San Juan Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Mineral Operations.

[FR Doc. 78-26249 Filed 9-18-78; 8:45 am]

[4310-84]

[NM 34489, 34491, 34504, 34505]

NEW MEXICO

Notice of Applications

SEPTEMBER 8, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Transwestern Pipeline Co. has applied for three 4-inch and one 6-inch pipeline and related facilities rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 16 S., R. 24 E.
Sec. 25, SE¼NE¼, NE¼SW¼ and N½SE¼.
T. 19 S., R. 24 E.,
Sec. 21, NE¼NE¼;
Sec. 27, NE¼NW¼;
Sec. 28, S½NW¼.
T. 16 S., R. 25 E.,
Sec. 30, lot 2 and E½NW¼.
T. 18 S., R. 28 E.,
Sec. 12, W½NE¼.

These pipelines will convey natural gas across 2.297 miles of public lands in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-26277 Filed 9-18-78; 8:45 am]

[4310-84]

OUTER CONTINENTAL SHELF OFFSHORE GULF OF MEXICO

Availability of Draft Environmental Statement and Holding of Public Hearing Regarding Proposed Oil and Gas Lease Sale No. 58

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement relating to a proposed Outer Continental Shelf (OCS) oil and gas lease sale of 110 tracts consisting of 215,743 hectares (532,885 acres) of submerged lands on the OCS in the western and central Gulf of Mexico.

Single copies of the draft environmental statement can be obtained from the Office of the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Suite 841, Hale Boggs Federal Building, 500 Camp Street, New Orleans, La. 70130, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the draft environmental statement will also be avaiable for review in the following public libraries: Austin Public Library, 401 West Ninth Street, Austin, Tex.; Houston Public Library, 500 McKinney, Houston, Tex.; Rosenburg Library, 2310 Sealy, Galveston, Tex.; Dallas Public Library, 1954 Commerce Street, Dallas, Tex.; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Tex.; La Ratama Library, 505 Mesquite Street, Corpus Christi, Tex.; Texas Southmost College Library, 80 Fort Brown Street, Brownsville, Tex.; New Orleans Public Library, 219 Loyola Avenue, New Orleans, La.; Louisiana State Library, Baton Rouge, La.; Lafayette Public Library, 301 West Congress Street, Lafayette, La.; Calcasieu Parish Library System, Downtown Branch, Lake Charles, La.; Harrison County Library, 21st Avenue and Beach, Gulfport, Miss.; Mobile Public Library, 701 Government Street, Mobile, Ala.; and Montgomery Public Library, 445 South Lawrence Street, Montgomery, Ala.

In accordance with 43 CFR 3301.4, a public hearing will be held beginning at 9 a.m. on November 7, 1978, in the BLM Conference Room, Suite 841, Hale Boggs Federal Building, 500 Camp Street, New Orleans, La. 70130, for the purpose of receiving comments and suggestions relating to the proposed lease sale. Should expressed public interest warrant it, the hearing may extend into a second day.

The hearing will provide the Secretary with additional information from public and private groups to help evaluate fully the potential effects of the proposed offering of 110 tracts on the total environment, aquatic resources, esthetics, recreation, and other resources in the entire area during the exploration, development, and production phases of the OCS leasing program. The hearing will also provide the Secretary with the opportunity to receive additional comments and views of interested State and local agencies.

Interested individuals, representatives, or organizations, and public officials wishing to testify at the public hearing are requested to contact the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, at the above address by 4:15 p.m., November 3, 1978. Written comments from those unable to attend the hearing also should be addressed to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management at the above address. The Department will accept written testimony and comments on the draft environmental statement until November 14, 1978. This should allow ample time for those unable to testify at the hearing to make their views known and for the submission of supplemental materials by those presenting oral testimony. Time limitations make it necessary to limit the length of oral presentations to ten (10) minutes. An oral statement may be supplemented, however, by a more complete written statement which may be submitted to the Manager, New Orleans Outer Continental Shelf Office, at the time of presentation of the oral statement. Written statements presented in person at the hearing will be considered for inclusion in the hearing record. To the extent that time is available after presentation of oral statements by those who have given advance notice, others present will be given an opportunity to be heard.

After all testimony and comments have been received and analyzed, a

final environmental statement will be prepared.

ARNOLD E. PETTY,
Acting Director,
Bureau of Land Management.

Approved: September 19, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant,
Secretary of the Interior.

[FR Doc. 78-26257 Filed 9-18-78; 8:45 am]

[4310-31]

Geological Survey

RESEARCH AND DEVELOPMENT PROGRAM IN OCS OIL AND GAS OPERATIONS

Presentation of Selected Projects

The U.S. Geological Survey is presenting to the public a summary of selected projects from its contract research and development program in OCS oil and gas operations on November 14 and 15, 1978. Ten principal investigators from the universitites, Government laboratories, and private companies will present their projects which are in the fields of monitoring and inspection of offshore structures, well control, and pollution prevention. Following the technical sessions, an open discussion of the research program will be held.

Attendance is limited, and invitations will be sent to those who apply first. Interested parties should write to Mr. John B. Gregory, Research Program Manager, Branch of Marine Oil and Gas Operations, Conservation Division, 620 National Center, Reston, Va. 22092, telephone 703-860-7531.

DON E. KASH,
Acting Director.

[FR Doc. 78-26250 Filed 9-18-78; 8:45 am]

[4310-03]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before September 8, 1978. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by September 29, 1978.

RONALD M. GREENBERG
Acting Keeper of the
National Register.

ALABAMA

Perry County

Marion, *President's House, Marion Institute,* 110 Brown St.

Wilcox County

Camden, *Wilcox County Courthouse Historic District,* irregular pattern along Broad St.

CALIFORNIA

Mariposa County

El Portal vicinity, *Merced Grove Ranger Station,* N of El Portal
Wawona vicinity, *Anderson, George, Cabin,* N of Wawona in Yosemite National Park
Wawona vicinity, *Clark, Galen, Homestead Site,* W of Wawona in Yosemite NP
Wawona vicinity, *Mariposa Grove Museum,* SE of Wawona in Yosemite NP

San Francisco County

San Francisco, *Fort Mason,* Bounded by Van Ness Ave., Bay St., Laguna St., and San Francisco Bay

Tehama County

Mineral, *Part Headquarters, Lassen Volcanic NP,* Off CA 36

Tuolumne County

Lee Vining vicinity, *Tioga Pass Entrance Station,* SW of Lee Vining in Yosemite NP
Lee Vining vicinity, *Tuolumne Meadows,* SW of Lee Vining in Yosemite NP
Lee Vining vicinity, *Tuolumne Meadows Ranger Stations and Comfort Stations,* SW of Lee Vining in Yosemite NP

FLORIDA

Dade County

Coral Gables, *Coral Gables Congregational Church,* 3010 DeSoto Blvd.

Gadsden County

Quincy, *Quincy Historic District,* Courthouse Sq. and environs

Hamilton County

Jasper, *United Methodist Church,* Central Ave. and 5th St.

Lee County

Pineland vicinity, *Josslyn Island Site,* S of Pineland

Leon County

Tallahassee vicinity, *Johnson-Caldwell House,* Old Bainbridge Rd.

Liberty County

Bristol vicinity, *Yon Mound and Village Site,* W of Bristol

GEORGIA

Glynn County

Brunswick, *Brunswick Old Town Historic District,* Bounded by 1st, Bay, New Bay, H and Cochran Sts.

IDAHO

Ada County

Boise, *Central Warm Springs Historic District,* 511-635 and 740 Warm Springs Ave.

Blaine County

Carey vicinity, *Fish Creek Dam,* NE of Carey

Jefferson County

Roberts, *Hotel Patrie,* U.S. 91

Shoshone County

Murray, *Murray Courthouse,* Main St.

ILLINOIS

Cook County

Chicago, *Bach, Emil, House,* 7415 N. Sheridan Rd.

INDIANA

Kosciusko County

Warsaw, *Kosciusko County Jail,* Main and Indiana Sts.

Lake County

Lowell, *Halsted, Melvin A., House,* 201 E. Main St.

Montgomery County

Crawfordsville, *Schlemmer, Otto, Building,* 129-131 N. Green St.

IOWA

Dallas County

Perry, *Perry Volunteer Fire Department Engine House,* 1208 1st St.

Winnebago County

Forest City, *Thompson, Charles J., House,* 336 N. Clark St.

Winneshiek County

Decorah vicinity, *Birdsall Lime Kiln,* NE of Decorah

MASSACHUSETTS

Bristol County

Attleboro, *Robinson, Capt. Joel, House,* 111 Rocklawn Ave.

Essex County

Beverly, *Odd Fellows' Hall,* 188-194 Cabot St.

NEW MEXICO

Santa Fe County

Santa Fe, *Digneo-Valdes House,* 1231 Paseo de Peralta

NEW YORK

Onondaga County

Syracuse, *Amos Block,* 210-216 W. Water St.

OREGON

Jackson County

Ashland, *Taverner, George, House,* 912 Siskiyou Blvd.
Rock Point, *White, John B., House,* 85 N. River Rd.

Linn County

Brownsville, *Brown, John and Amelia, Farmhouse,* SE of Brownsville on OR 228

Multnomah County

Portland, *First Unitarian Church of Portland,* 1011 SW. 12th Ave.

TENNESSEE

Carter County

Johnson City vicinity, *Hunt, Henson, House,* SE of Johnson City on Brookdale Rd.

WISCONSIN

Jefferson County

Fort Atkinson, *Jones Dairy Farm,* Jones Ave.

WYOMING

Big Horn County

Lovell vicinity, *Mason-Lovell Ranch,* SE of Lovell

[FR Doc. 78-25990 Filed 9-18-78; 8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration of the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within 2 weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 18th day of September 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING SEPTEMBER 15, 1978

NAME OF APPLICANT AND LOCATION OF ENTERPRISE AND PRINCIPAL PRODUCT OR ACTIVITY

Village Properties, Inc., Carrabassett Valley, Maine—Ski resort.
The Rochester Corp., Culpeper, Va.—Manufacture of electromechanical cable.
Inter Hex Corp., Washington, Pa.—Manufacture of prefabricated housing.
Brodhead Nail Co., Swannanoa, N. C.—Manufacture of steel nails.
Liberty Pump & Surfacing Co., Inc., Liberty, Miss.—Fabricating and repairing pump components.
Better Backers, Inc., Chatsworth, Ga.—Application of secondary backing to tufted carpets.
Hilton, Inc., Panama City Beach, Fla.—Motel.
Liberty Folder Corp., Sidney, Ohio—Manufacture of paper folding equipment.
Dunham Lehr, Inc., Richmond, Ind.—Manufacture of form machinery and stoves.
Old Indiana Development Corp., Washington Township-Boone County, Ind.—Theme Park.
Macsi (Mass and Cost Savers, Inc.), Hannibal, Mo.—Magnesium diecastings.
Dakota Poultry Processors, Inc., Watertown, S. Dak.—Dressing poultry
Sun Fun, Inc., Sedona, Ariz.—Restaurant.
NAMCO, Inc., Sioux City, Iowa—Manufacture of form and construction machinery.

[FR Doc. 78-26292 Filed 9-18-78; 8:45 am]

[4510-30]

STATE OF NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY

Correction to Rules of Procedure

This notice announces a correction to the rules of procedure applicable to the hearing for the Department of Employment Security of the State of New Hampshire to be held, pursuant to the last and first sentences of section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), at 9:30 o'clock in the morning on September 14, 1978, in courtroom C, seventh floor, Vanguard Building, 1111 20th Street NW., Washington, D.C.

The correction involves two sentences inadvertently omitted from rule of procedure No. 14 and a related grammatical revision necessitated by the insertion of such omitted sentences. Accordingly, rule of procedure No. 14, as published in the FEDERAL REGISTER on August 18, 1978, (vol. 43, No. 161, page 36722), is hereby deleted. Substituted therefor is the corrected rule of procedure No. 14, as follows:

* * * * *

14. The presiding administrative law judge shall prepare a recommended decision containing his findings of fact and conclusions of law on or before October 16, 1978. In the event that evidence is offered and admitted which is relevant to any constitutional issue properly raised under these rules, findings of fact shall be made with respect to such evidence. No conclusions of law regarding the constitutionality of any Federal statute shall be made. The presiding administrative law judge shall promptly certify to the Secretary of Labor his recommended decision and the entire record of the proceedings, and mail a copy of his certified and recommended decision to each party of record and to each interested party permitted to participate in the proceedings. Additionally, the presiding administrative law judge shall telephone each of the parties of record to advise that a copy of the recommended decision may be picked up by

the parties of record at the address stated in paragraph 3.

* * * * *

Signed at Washington, D.C., on September 14, 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-26264 Filed 9-18-78; 8:45 am]

[7537-01]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

VISUAL ARTS ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Visual Arts Advisory Panel to the National Council on the Arts will be held on October 12, 1978, from 9:30 a.m. to 5 p.m. at the University of Pennsylvania, University Museum, Mosaic Gallery, 33rd and Spruce Streets, Philadelphia, Pa.; and October 13-14, 1978, from 9:30 a.m. to 5 p.m. at the University of Pennsylvania, Benjamin Franklin Room, Houston Hall, 34th and Spruce Streets, Philadelphia, Pa.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy; guidelines; question and answer period with the public.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-26251 Filed 9-18-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

DIRECTORATE FOR SCIENTIFIC, TECHNOLOGICAL, AND INTERNATIONAL AFFAIRS

Program for the Analysis of Science Resources: Personnel, Funding, Impacts, and Outputs

Summary: The National Science Foundation announces its ongoing program for the analysis of science resources: Personnel, funding, impacts, and outputs. Awards will be for in-depth analyses and integration of data on scientific and technical personnel, the funding of scientific and technological activities, for development of new measures of the impacts and outputs of scientific and technological activities, and for related studies. Most awards are expected to be in the $25,000 to $50,000 range.

Proposals received after February 2, 1979, are not likely to be considered for funding until the 1980 fiscal year. For copies of the Program Announcement, request: Program for the Analysis of Science Resources, NSF 78-47 or contact the following individuals in Division of Science Resources Studies, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550: Funding—Norman Friedman, telephone 202-634-4625; personnel—Morris Cobern, telephone 202-634-4655; impacts and outputs—Donald Buzzelli, telephone 202-634-4682.

This is a revision of notice No. 7555-01, which appeared in the FEDERAL REGISTER of April 26, 1978. Respondents to that notice will receive this program announcement with no further request.

M. REBECCA WINKLER,
Committee Management Coordinator.

SEPTEMBER 14, 1978.

[FR Doc. 78-26347 Filed 9-18-78; 8:45 am]

[7555-01]

SUBCOMMITTEE FOR THE REVIEW OF NUCLEAR SCIENCE

Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

ADVISORY COMMITTEE FOR PHYSICS; SUBCOMMITTEE FOR THE REVIEW OF NUCLEAR SCIENCE.

Date and time: October 5-7, 1978; 9 a.m. to 5 p.m. each day.

Place: Rooms 340 and 341, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Laura P. Bautz, Senior Staff Associate, Division of Physics, Room 341, National Science Foundation, Washington, D.C. 20550, telephone 202-632-4175.

Purpose of subcommittee: To provide program oversight concerning NSF support for research in nuclear science.

Agenda: To review NSF Nuclear Science Section documentation as part of the program oversight function.

Reason for closing: The meeting will deal with a review of grants and declinations in which the subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Director, NSF, pursuant to provisions of section 10(d) of the Federal Advisory Committee Act.

M. REBECCA WINKLER,
Committee Management Coordinator.

SEPTEMBER 14, 1978.

[FR Doc. 78-26346 Filed 9-18-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON REGULATORY ACTIVITIES

Meeting

The ACRS Subcommittee on Regulatory Activities will hold an open meeting on October 4, 1978, in Room 1046, 1717 H Street NW., Washington, D.C. 20555. Notice of this meeting was published in the FEDERAL REGISTER on August 15, 1978 (43 FR 36152).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977 (56972), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

WEDNESDAY, OCTOBER 4, 1978

MEETING WILL COMMENCE AT 8:45 A.M.

The Subcommittee will hear presentations from the NRC staff and will hold discussions with this group pertinent to the following:

(1) Regulatory Guide 1.134, Revision 1, "Medical Evaluation of Personnel Requiring Operator Licenses."

(2) Regulatory Guide 1.28, Revision 2, "Quality Assurance Program Requirements (Design & Construction)."

(3) Regulatory Guide 1.104, Revision 1, "Overhead Crane Handling Systems for Nuclear Power Plants."

(4) Revisions to Appendices to 10 CFR, Part 50:

a. Appendix G, "Fracture Toughness Requirements."

b. Appendix H, "Reactor Vessel Surveillance Program Requirements."

(5) Draft Regulatory Guide 1.35, Draft 1, Revision 3, "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containments."

(6) Draft Regulatory Guide 1.35.1, Draft 1, "Determination of Prestressing Forces for Inspection of Prestressed Concrete Containments."

(7) Draft Regulatory Guide 1.XXX, Draft 1, "Nuclear Analysis and Design of Concrete Radiation Shielding for Nuclear Power Plants."

(8) Draft Regulatory Guide 1.XXX, Draft 1, "Ultrasonic Testing of Reactor Vessel Welds During Inservice Inspection."

Other matters which may be of a predecisional nature relevant to reactor operation of licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding Regulatory Guides 1.134, Revision 1; 1.28, Revision 2; and 1.104, Revision 1, may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practical to Mr. Gary R. Quittschreiber (ACRS), the Designated Federal Employee for the meeting, in care of ACRS, Nuclear Regulatory Commission, Washington, D.C. 20555, or telecopy them to the Designated Federal Employee, 202-634-3319, as far in advance of the meeting as practical. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee, Mr. Gary R. Quittschreiber, telephone 202-634-3267, between 8:15 a.m. and 5 p.m, e.d.t.

Dated: September 14, 1978.

JOHN C. HOYLE,
Advisory Committee, Management Officer.

[FR Doc. 78-26279 Filed 9-18-78; 8:45 am]

[1505-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON IMPROVED SAFETY SYSTEMS

Meeting

Correction

In FR Doc. 78-26073, appearing on page 41316 in the issue for Friday, September 15, 1978, the meeting time, now reading "8:30 a.m.", should read, "9:00 a.m.".

[7590-01]

[Docket Nos. 50-443-A and 50-444-A]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE, ET AL., SEABROOK STATION, UNITS 1 AND 2

Notice of Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

Public Service Co. of New Hampshire, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed on May 15, 1978, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. This information adds Massachusetts Municipal Wholesale Electric Co., Vermont Electric Cooperative, Inc., Maine Public Service Co., Taunton Municipal Lighting Plant Commission, and Bangor Hydro-Electric Co. as possible coowners of the Seabrook Station, units 1 and 2.

The information was filed by Public Service Co. of New Hampshire, the United Illuminating Co., Central Maine Power Co., Central Vermont Public Service Corp., the Connecticut Light & Power Co., Fitchburg Gas & Electric Light Co., Montaup Electric Co., New Bedford Gas & Edison Light Co., New England Power Co., Vermont Electric Power Co., Inc., Massachusetts Municipal Wholesale Electric Co., Vermont Electric Cooperative, Inc., Maine Public Service Co., Taunton Municipal Lighting Plant Commission, Bangor Hydro-Electric Co., and town of Hudson, Mass., Light & Power Department in connection with their application for construction permits and operating licenses for the Seabrook Station, units 1 and 2. The site for this plant is located in Rockingham County, N.H.

The original antritrust portion of the application was submitted on July 9, 1973, and Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matters, was published in the FEDERAL REGISTER on August 9, 1973 (38 FR 21522). The notice of hearing was published in the FEDERAL REGISTER on August 9, 1973 (38 FR 21519).

Copies of the above stated documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Exeter Public Library, Front Street, Exeter, N.H.

Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have his views on the antitrust matters with respect to the Massachusetts Municipal Wholesale Electric Co., Vermont Electric Cooperative, Inc., Maine Public Service Co., Taunton Municipal Lighting Plant Commission, and Bangor Hydro-Electric Co. presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission on or before November 6, 1978.

Dated at Bethesda, Md., this 21st day of August 1978.

For the Nuclear Regulatory Commission.

STEVEN A. VARGA,
Chief, Light Water Reactors Branch No. 4, Division of Project Management.

[FR Doc. 78-24769 Filed 9-18-78; 8:45 am]

[7555-02]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

INTERGOVERNMENTAL, SCIENCE, ENGINEERING, AND TECHNOLOGY ADVISORY PANEL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

INTERGOVERNMENTAL SCIENCE, ENGINEERING, AND TECHNOLOGY ADVISORY PANEL; HUMAN RESOURCES TASK FORCE

Date: October 6, 1978.

Place: New Executive Office Building, 726 Jackson Place NW., room 3104, Washington, D.C.

Type of meeting: Open.

Contact person: Mr. Louis Blair, Office of Science and Technology Policy, Executive Office of the President, telephone: 202-395-4596. Anyone who plans to attend should contact Mr. Blair by October 4, 1978.

Purpose of the panel: The Intergovernmental Science, Engineering, and Technology Advisory Panel was established to identify State, regional, and local government problems which research and technology may assist in resolving or ameliorating and to help develop policies to transfer research and development findings.

Minutes of the meeting: Executive minutes of the meeting will be available from Mr. Blair.

Tentative agenda: (1) Overview of selected Department of Labor R & D programs of concern to State and local governments; (2) overview of selected information dissemination programs in the Department

of Health, Education, and Welfare; (3) discussion of future Task Force activities.

WILLIAM J. MONTGOMERY,
Executive Officer, Office of Science and Technology Policy.

SEPTEMBER 14, 1978.

[FR Doc. 78-26327 Filed 9-18-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on September 12, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reveiwer listed.

NEW FORMS

U.S. COMMISSION ON CIVIL RIGHTS

Readership Survey, CCR 20, single time, persons and organizations with interest in civil rights, 500 responses, 165 hours, Laverne V. Collins, 395-3214.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Network for General Consumer Reaction, SSA-2955, single time, network mechanism, 1,000 responses, 167 hours, Reese, B. F., Human Resources Division, 395-3211.

Health Care Financing Administration (medicare), Medicaid Quality Control Statistical Summary Reports, HCFA 302 through 312, semi-annually, XIX State agencies, 3,928 responses, 3,928 hours, Richard Eisinger, 395-3214.

DEPARTMENT OF COMMERCE

Bureau of the Census, Agriculture Supplement to the National Annual Housing Survey, AHS-2A, single time, households in 461 PSU design, 60,000 responses, 1,000 hours, Office of Federal Statistical Policy and Standards, 673-7977.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, a Process and Management Study of ESEA, title IV Consolidation, 566, single time, Sea's, Lea's and Nonpublic Schools, 5,276 responses, 4,537 hours, Human Resources Division, Laverne Collins, 395-3532.

NATIONAL SCIENCE FOUNDATION

Survey of Urban Cultural/Recreation facilities, single time, Parks and Recreation Dept. (48 SMSA's) all national accredited museums and zoos, 700 responses, 700 hours, Office of Federal Statistical Policy and Standards, 673-7977.

Observation Protocol, on occasion, College and Public School Science Teachers, 20 responses, 20 hours, Warren Topelius, 395-6134.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development, Application for Federal Assistance, Community Development Program, and Assurances, HUD-6757, 7015, and 7015.12, on occasion, federally assisted new communities, 50 responses, 250 hours, Budget Review Division, 395-4775.

REVISIONS

VETERANS' ADMINISTRATION

Application for Dependency and Indemnity Compensation or Death Pension By Widow/er or Child, 21-534, on occasion, veterans; dependents, 175,000 responses, 306,250 hours, Caywood, D. P., 395-3443.

Information From Remarried Widow/er, 21-4103, on occasion, remarried widow/er, 43,500 responses, 14,500 hours, Caywood, D. P., 395-3443.

Request for Information Concerning Unreimbursed Family Medical Expenses, 21-8416A, on occasion, claimant, 175,000 responses, 43,750 hours, Caywood, D. P., 395-3443.

REVISIONS

VETERANS ADMINISTRATION

Statement of Termination of Marital Relationship, 21-8796, on occasion, claimants for death benefits, 5,000 responses, 1,666 hours, D. P. Caywood, 395-3443.

Veterans Supplemental Application for Assistance in Acquiring Specially Adapted Housing, 26-4555c, on occasion, veterans, 200 responses, 50 hours, D. P. Caywood, 395-3443.

DEPARTMENT OF AGRICULTURE

Food and nutrition service food stamp accountability report, FNS-250, monthly, all food stamp issuing agents and bulk storage and transfer points, 69,600 responses, 278,400 hours, C. A. Ellett, 395-6132.

DEPARTMENT OF COMMERCE

Bureau of Census, annual trade survey: 1978, b-450 and 451, other (see sf-83), merchant wholesalers, 13,000 responses, 6,500 hours, C. Louis Kincannon, 395-3211.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, application for strengthening developing institutions, oe-1049-1, annually, ihe's 150 responses, 24,000 hours, Laverne V. Collins, 395-3214.

Social Security Administration, state's quarterly report of wages paid, ssa-3963 and 3963a, quarterly, subdivisions of all 50 states, 240,000 responses, 1,440,000 hours, B. F. Reese, 395-3211.

Office of Education, application for federal assistance (nonconstruction programs) instruction for right-to-read program, oe-295, annually, LEA's state community service agencies, 300 responses, 6,000 hours, Budget Review Division, 395-4775.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration, motorist sanction severity survey, single-time, licensed drivers, A. Strasser, 395-6132.

EXTENSIONS

ENVIRONMENTAL PROTECTION AGENCY

Study of Human Tissue Heavy Metal Burden in Nonferrous Smelter Communities, single-time, household and individuals in seven smelter communities, 1,800 responses, 3,600 hours, Office of Federal Statistical Policy and Standard, 673-7956.

DEPARTMENT OF DEFENSE

Department of the Navy Inquiry (references of candidates for commissions in naval service), NAVCRUIT, 1110/28, on occasion, former schools and employers, 850,000 responses, 425,000 hours, Marsha Traynham, 395-3773.

DEPARTMENT OF THE NAVY

Unit Price Analysis—Basic Construction (ships), NAVSEA 4280/2 and 4280/2A, on occasion, private shipyards, 38 responses, 800 hours, Office of Federal Statistical Policy and Standard, 673-7956.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management, schedule of charges and project information—housing for the elderly (non-profit), HUD-92458A, on occasion, owners of HUD-assisted projects, 165 responses, 165 hours, D. P. Claywood, 395-3443.

Housing Production and Mortgage Credit Application for Subdivision Feasibility Analysis, FHA-2250, on occasion, subdivision developer, 5,000 responses, 2,500 hours, D. P. Claywood, 395-3443.

Housing Management, requirements for preparation of financial reports, statement of profit and loss, HUD-92408, 92410, and 92410-nh, on occasion, all multifamily housing projects, 14,000 responses 14,000 hours, D. P. Claywood, 395-3443.

DAVID R. LEUTHOLD
Budget and Management Officer.

[FR Doc. 78-26418 Filed 9-18-78; 8:45 am]

[3110-01]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on September 13, 1978 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health, ABC Task Force on National Blood Data Center, single-time, blood service establishments, 200 responses, 90 hours, Office of Federal Statistical Policy and Standard, 673-7956.

Office of the Secretary, Research Design for C-9-77-0008 (Evaluation of the Effectiveness of HEW Program Delivery to Samoans in three geographic locations), OS-9-78, single-time, Samoa Evaluation Project, 736 responses, 883 hours, Raynsford, R., 395-3814.

Public Health Service, National Research Service Award Institutional Grant Application, PHS-6025, on occasion, organizations engaged in research and/or training, 2,000 responses, 80,000 hours, Richard Eisinger, 395-3214.

Public Health Service, Research Fellowship Application, PHS-416-1, 2, 3, 5, 7, 9, 11, and 16, on occasion, individual fellowship applicants and awardees, 32,400 responses, 48,725 hours, Richard Eisinger, 395-3214.

DEPARTMENT OF LABOR

Employment and Training Administration, Study of Win/Job Corps Demonstration Program, MT-296, single-time, present and former Parti. In spec. dol job training program, 140 responses, 70 hours, Strasser, A., 395-6132.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Financial Status, Performance, and State Advisory Council Reports for Title IV, ESEA, P.L. 93-380, OE-535-1 through 3, annually, sea's, 59 responses, 3,540 hours, Laverne V. Collins, 395-3214.

EXTENSIONS

DEPARTMENT OF COMMERCE

Departmental and Other Request for: Name Check—Identification Record Check, CD-227, on occasion, applicants for financial assistance, 10,000 responses, 5,000 hours, C. Louis Kincannon, 395-3211.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development, Statement of Financial Condition Cost Control Statement, supplemental grants CDA letter No. 8, HUD-7010 & 7011, Monthly, local agencies with model cities grants, 1,800 responses, 7,200 hours, Caywood, D. P., 395-3443.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, Application for Trustee Deed by Native Indian or Eskimo of Alaska, 2560-6, on occasion, Indian or Eskimo applicants, 100 responses, 50 hours, Ellett, C. A., 395-6132.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration, Survey of Public Perceptions on Highway Safety annually, adult drivers in national sample, 1,500 responses, 375 hours, Strasser, A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-26419 Filed 9-18-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0333]

BBS EQUITIES, LTD.

Notice is hereby given that BBS Equities, Ltd. (BBS), Suite 2400 Gateway One, Newark, N.J. 07102, pursuant to the provisions of § 107.105 of the Regulations governing small business investment companies (13 C.F.R. § 107.105 (1978)), has surrendered its license to operate as a small business investment company (SBIC).

BBS was incorporated under the laws of the State of New Jersey to operate solely as an SBIC under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), (the Act), and it was issued license number 02/02-0333 by the Small Business Administration on September 23, 1977.

On September 7, 1978, SBA approved the merger of BBS into Venturtech Capital, Inc., an SBIC located at Suite 706, Republic Tower, 5700 Florida Boulevard, Baton Rouge, La. 70806. A branch office will be maintained at 12 Bank Street, Summit, N.J. 07901.

Under the authority vested by the act and the rules and regulations promulgated thereunder, the surrender of the license of BBS is hereby accepted and accordingly, BBS is no longer licensed to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: September 13, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-26334 Filed 9-18-78; 8:45 am]

[8025-01]

[License No. 04/04-0147]

BENSON INVESTMENT CO., INC.

Issuance of License

On June 16, 1978, a notice was published in the FEDERAL REGISTER (43 FR 26172), stating that an application had been filed by Benson Investment Co., Inc., 406 South Commerce Street, Geneva, Ala. 36340, with the Small Business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (SBIC).

Interested parties were given until the close of business July 3, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, the SBA issued License No. 04/04-0147 to Benson Investment Co., Inc., to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: September 8, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-26335 Filed 9-18-78; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1523]

CALIFORNIA

Declaration of Disaster Loan Area

Sonoma County, Calif., constitutes a disaster area because of damage resulting from a fire which occurred on August 9, 1978, through August 20, 1978. Eligible persons, firms, and organizations may file applications for

loans for physical damage until the close of business on November 13, 1978, and for economic injury until the close of business on June 13, 1979 at: Small Business Administration, District Office, 211 Main Street, 4th floor San Francisco, Calif. 94105 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 13, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-26336 Filed 9-18-78; 8:45 am]

[8025-01]

[License No. 04/04-0150]

CORPORATE CAPITAL, INC.

Application for a License as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration, pursuant to § 107.102 of the Regulations (13 C.F.R. 107.102 (1978)), under the name of Corporate Capital, Inc., 2001 Broadway, Riviera Beach, Fla. 33404, for a license to operate in the State of Florida as an SBIC under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers and directors are as follows:

Jerry Thomas, Sea Oats, Beach Road, Jupiter, FL, Chairman of the Board, President and Director.

Vernon F. Raedisch, 3490 La Jardin Court, Apartment C-2, Greenacres City, FL 33463, Vice President, Treasurer and Director.

Patrick M. Gordon, 359 Green Briar Drive, Lake Park, FL, Secretary and Director.

Major stockholders and percentage of ownership are:

First Marine Bank & Trust Co. of the Palm Beaches, FL, 49 percent.

First Marine National Bank & Trust Co. of Lake Worth, FL, 35 percent.

First Marine National Bank & Trust Co., Jupiter/Tequesta, FL, 16 percent.

First Marine Banks, Inc., a registered bank holding company, is the major stockholder of the above mentioned banks. No one individual or corporation owns 10 percent or more of First Marine Banks, Inc., stock.

The Applicant will begin operations with a capitalization of $1,266,000 which will be a source of long-term loans and venture capital for diversified small business concerns. In addition to financial assistance, the Applicant intends to render management consulting services to its clients.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any interested person may, not later than October 4, 1978, submit written comments on the proposed company to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Riviera Beach, Fla.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: September 7, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-26337 Filed 9-18-78; 8:45 am]

[8025-01]

FIRST WALL STREET SMALL BUSINESS INVESTMENT CO., INC.

Issuance of License To Operate as a Small Business Investment Company

On May 3, 1978, a notice of application for a license as a Small Business Investment Co. was published in the FEDERAL REGISTER (43 FR 19093) stating that an application had been filed with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)) for a license as a small business investment company by New Court Ventures, Inc., One Rockefeller Plaza, New York, N.Y. 10020.

Interested parties were given until the close of business May 18, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information and the facts with regard thereto, SBA on August 31, 1978, issued License No. 02/02-0330 to First Wall Street Small Business Investment Co., Inc., to operate as a small business investment company.

(Catalogue of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: September 8, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-26338 Filed 9-18-78; 8:45 am]

[8025-01]

[License No. 09/09-0211]

FLORISTS CAPITAL CORP.

Notice of Issuance of Small Business Investment Company License

On December 23, 1977, a notice of application for a license as a small business investment company was published in the FEDERAL REGISTER (Vol. 42, No. 247) stating that an application had been filed with the Small Business Administration pursuant to section 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1977)), for a license to operate as a small business investment company by Florists Capital Corp., 10524 West Pico Boulevard, Los Angeles, Calif. 90064.

Interested parties were given until the close of business on January 9, 1978, to submit their comments. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information and facts with regard thereto, SBA issued License No. 09/09-0211 to Florists Capital Corp. on August 28, 1978.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: September 8, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-26339 Filed 9-18-78; 8:45 am]

[8025-01]

[Proposed License No. 02/02-0352]

PERCIVAL CAPITAL CORP.

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1977)), under the name of Percival Capital Corp., 2 West 46th Street, New York, N.Y. 10036, for a license to operate as a small business investment company, under the provisions of the Small Business Investment Act of 1958, as amended (Act), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and stockholders are as follows:

NAME AND TITLE
George Augustus Simpson (Son), 103 Park Avenue, Suite 1110, New York, N.Y. 10017, President, Director.
Dr. George Augustus Simpson (Father), 3619 Percival Avenue, Miami, Fl. 33133, Treasurer, Director, 70 percent.
Dr. Harold Ramsey, 3201 Dorchester Road, Baltimore, Md. 21215, Secretary, 30 percent.

The applicant proposes to commence operations with a capitalization of $505,000 derived from the sale of 10 shares of common stock. Dr. Simpson will be the purchaser of 7 shares and Dr. Ramsey 3 shares.

The applicant will conduct its operations principally in the State of New York, expect to provide financing in the form of long-term loans or by purchasing equity securities in small concerns engaged in both the servicing or manufacturing business, and to those who are not sufficiently strong economically to obtain bank financing or other standard types of financing and, will employ a management advisor.

Matters involved in SBA's consideration of the application include the general business reputation of the owner and management, and the probability of successful operations of the new company, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than October 4, 1978, submit to SBA, in writing, relevant comments on the proposed licensing of this company. Any such communications should be addressed to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: September 8, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-26340 Filed 9-18-78; 8:45 am]

[8025-01]

REGION IV—ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, Ky., will hold a public meeting from 9 a.m. to 5 p.m. on Thursday, October 5, 1978, and from 9 a.m. to noon on Friday, October 6, 1978, at the Executive Inn Rivermont, One Executive Boulevard, Owensboro, Ky., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call R. B. Blankenship, District Director, U.S. Small Business Administration, 188 Federal Office Building, 600 Federal Place, Louisville, Ky. 40202, 502-352-5978.

Dated: September 13, 1978.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-26341 Filed 9-18-78; 8:45 am]

[8025-01]

REGION VI—ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting at 9:30 a.m., on Friday, October 27, 1978, Plaza Tower Building, 1001 Howard Avenue, 17th Floor, New Orleans, La., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Joseph M. Conrad, District Director, U.S. Small Business Administration, 1001 Howard Avenue, Suite 1724, New Orleans, La. 70113-504-589-2744.

Dated: September 8, 1978.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-26342 Filed 9-18-78; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1525]

INDIANA

Declaration of Disaster Loan Area

Blackford County and adjacent counties within the State of Indiana constitute a disaster area as a result of damage caused by severe thunderstorm and flash flooding which occurred on August 18, 1978. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 13, 1978, and for economic injury until the close of business on June 11, 1979 at: Small Business Administration, District Office, Federal Building, Fifth Floor, 575 North Pennsylvania Street, Indianapolis, Ind., or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 11, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-26270 Filed 9-18-78; 8:45 am]

[8025-01]

LOCAL DEVELOPMENT COMPANY LOANS, HANDICAPPED ASSISTANCE LOANS, AND BUSINESS LOANS

Waiver of Administrative Ceilings

SBA has adopted administrative ceilings limiting the amount of financial assistance generally available to applicants for local development company loans (LDC), handicapped assistance loans (HAL) and regular business loans. (§§ 108.502-1(d)(3), 118.31(a)(1) and 122.5(b) of Title 13 CFR.)

SBA has also adopted regulations authorizing the waiver of the applicable ceilings upon a determination by SBA that the particular loan furthers a "National Agency of Regional program objective." (§§ 108.502-1(d)(4), 118.31(a)(2) and 122.5(c).) These sections further provide that SBA may publish from time to time standards or examples illustrating National, agency, or regional objectives, and that SBA will not recognize any such objective until it has been published in the FEDERAL REGISTER.

In accordance with the above-cited regulations, the following examples of National, agency and regional objectives are published. To justify waiver of the applicable administrative ceiling, it must appear to SBA's satisfaction that any two of the listed objectives will be advanced by the loan in question. The objectives are:

1. Construction of medical facilities, the need for which has been certified by appropriate local authority;
2. Conservation or production of energy;
3. Creation or preservation of jobs;
4. Performance of a specific Government contract;
5. Stimulation of the economy of a labor surplus area;
6. Conservation of natural resources;
7. Improvement of mass transit facilities;
8. Economic development or depressed urban or rural areas;
9. Assistance to broadcasting and cable TV operations;
10. Revitalization of SBA-designated neighborhood business areas;
11. Assistance to businesses for the primary purpose of exporting goods and/or services. "Primary" is defined as at least 50 percent of the total loan disbursement will be used directly for exporting.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-26286 Filed 9-18-78; 8:45 am]

[4710-01]

DEPARTMENT OF STATE

[CM-8/103]

ADVISORY COMMITTEE TO U.S. SECTION OF THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS

Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas will be held on October 4, 1978, in the Woodward Room of the National Wildlife Federation, 1412 16th Street, Washington, D.C., at 9 a.m.

The meeting will be open to the public and the public may participate in the discussion subject to the instructions of the Committee Chairman. Subjects to be discussed include: Review of the status of the stocks and research concerning Atlantic bluefin tuna; review of the status of stocks and research concerning billfish; review of the status of stocks and research concerning yellowfin, skipjack, albacore, and bigeye tunas; report on SCRS officers' meeting; report of bilateral discussions and their impact on foreign fishing for Atlantic bluefin tuna in the Gulf of Mexico and Northwest Atlantic; discussion of preliminary positions for ICCAT concerning bluefin, bigeye, and albacore tunas; and other business.

Requests for further information on the meeting should be Directed to Mr. Brian Hallman, OES/OFA/FA, Room 3214, Department of State, Washington, D.C. 20520. Mr. Hallman may be reached by telephone on 202-632-1073.

Dated: September 11, 1978.

JOHN D. NEGROPONTE,
Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 78-26252 Filed 9-18-78; 8:45 am]

[4710-07]

[CM-8/101]

SHIPPING COORDINATING COMMITTEE; SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on Radiocommunications of the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 1:30 p.m. on October 19, 1978, in Room 8442 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

The purpose of the meeting is to prepare position documents for the 20th session of the subcommittee on Radiocommunications of the Intergovernmental Maritime consultative Organization (IMCO) to be held in London in the fall of 1979. In particular, the working group will discuss the following topics:

Results of the 19th session.
Code of safety requirements for mobile offshore drilling units.
Operational standards for shipboard radio equipment.
Revision of Resolution A.283(VIII) Maritime Distress System.

Requests for further information should be directed to Lt. R. F. Carlson, U.S. Coast Guard (G-OTM/74), Washington, D.C. 20590, telephone 202-426-1345.

The Chairman will entertain comments from the public as time permits.

Dated: September 5, 1978.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

[FR Doc. 78-26254 Filed 9-18-78; 8:45 am]

[4710-07]

[CM-8/102]

STUDY GROUP 4 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that study group four of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 11, 1978 at 10 a.m. in room 6802 of the Department of Commerce, 14th Street NW. (between E Street and Constitution Avenue), Washington, D.C. This study group deals with matters in telecommunications relating to the development of international digital data transmission services.

The agenda for the October 11 meeting will include consideration of the following:

1. Late contributions to the meeting of CCITT study group XVII in Geneva, November 21-29, 1978;
2. U.S. participation at the study group XVII meeting;
3. Other business.

All participants are requested to use the main entrance to the Department of Commerce on 14th Street NW. Members of the general public who desire to attend the meeting on October 11 will be admitted up to the limit of the meeting room.

Requests for further information should be directed to Mr. Richard H. Howarth, State Department, Washington, D.C. 20520, telephone 202-632-1007.

Dated: September 11, 1978.

RICHARD H. HOWARTH,
Vice Chairman,
U.S. CCITT National Committee.

[FR Doc. 78-26253 Filed 9-18-78; 8:45 am]

[4810-40]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circular; Public Debt Series—No. 22-78]

SERIES T-1980

Treasury Notes of September 30, 1980

SEPTEMBER 14, 1978.

1. INVITATION FOR TENDERS

1. 1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,684,000,000 of United States securities, designated Treasury Notes of September 30, 1980, Series T-1980 (CUSIP NO. 912827 JB 9). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2. 1. The securities will be dated October 2, 1978, and will bear interest from that date, payable on a semiannual basis on March 31, 1979, and each subsequent 6 months on September 30 and March 31, until the principal becomes payable. They will mature September 30, 1980, and will not be subject to call for redemption prior to maturity.

2. 2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, September 20, 1978. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 19, 1978.

3. 2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3. 3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3. 4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3. 5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commerical bank or a primary dealer.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of 1 percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to 3 decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made or completed on or before Monday, October 2, 1978, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, September 28, 1978, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Wednesday, September 27, 1978, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5. 4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5. 5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 78-27276 Filed 9-14-78; 2:10 pm]

[1505-01]

INTERSTATE COMMERCE COMMISSION

[Decisions Vol. No. 21]

DECISION-NOTICE

Correction

In FR Doc. 78-23368 appearing on page 37311 in the issue of Tuesday, August 22, 1978, on page 37313 in the 1st column. the 1st full paragraph, the 14th line should read, "MC 94265 (Sub-279F), * * * the facilities of Virga's Pizza Crust of * * *".

[7035-01]

[AB 52 (SDM)]

ATCHISON, TOPEKA & SANTA FE RAILWAY CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in title 49 of the Code of Federal Regulations, Part 121.23, that the Atchison, Topeka & Santa Fe Railway Co., has filed with the Commission its amended system diagram map in docket No. AB 52 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on July 17, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State-designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 52 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY CO.

DESCRIPTIONS OF LINE TO ACCOMPANY THE REVISED SYSTEM DIAGRAM AND DETAIL MAP

Category (1)

All lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date upon which the diagram, or any amended diagram, is filed with the Commission.

Map Code (Index No. 8)—Texas

(a) Skellytown to White Deer, a 10.4 mile industrial spur on the Second District, also referred to as the Skellytown spur.

(b) Located entirely in the State of Texas.
(c) Located entirely in Carson County.
(d) Skellytown spur connecting at White Deer, Main Line Milepost 512.8.
(e) Agency Station at White Deer (Main Line Milepost 512.8).

Category (1)

All lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date upon which the diagram, or any amended diagram, is filed with the Commission.

Map Code (Index No. 10)—Arizona

(a) Williams to Grand Canyon; entire Grand Canyon District 63.79 miles.
(b) Located entirely in the State of Arizona.
(c) Located entirely in Coconino County.
(d) Milepost 0.0 to 63.79.
(e) No agency stations on segment.

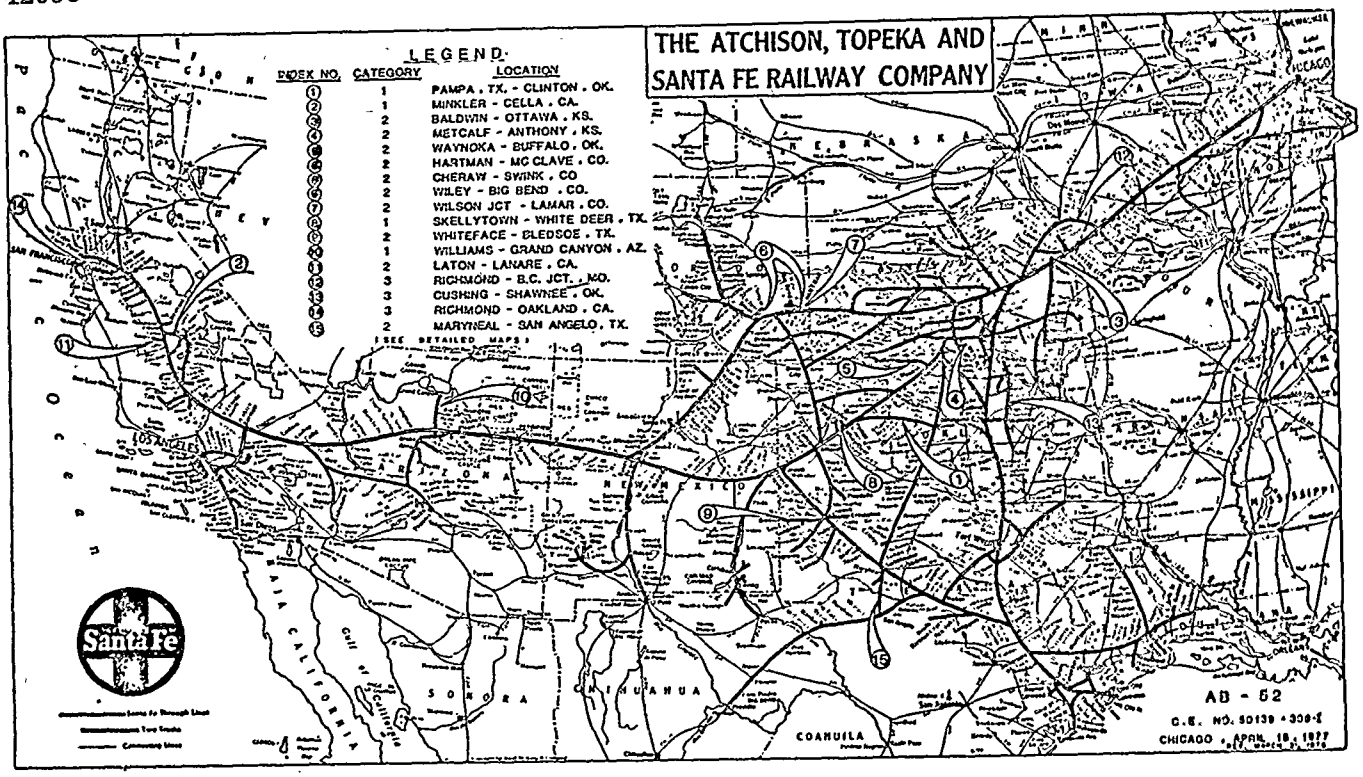
Category (2)

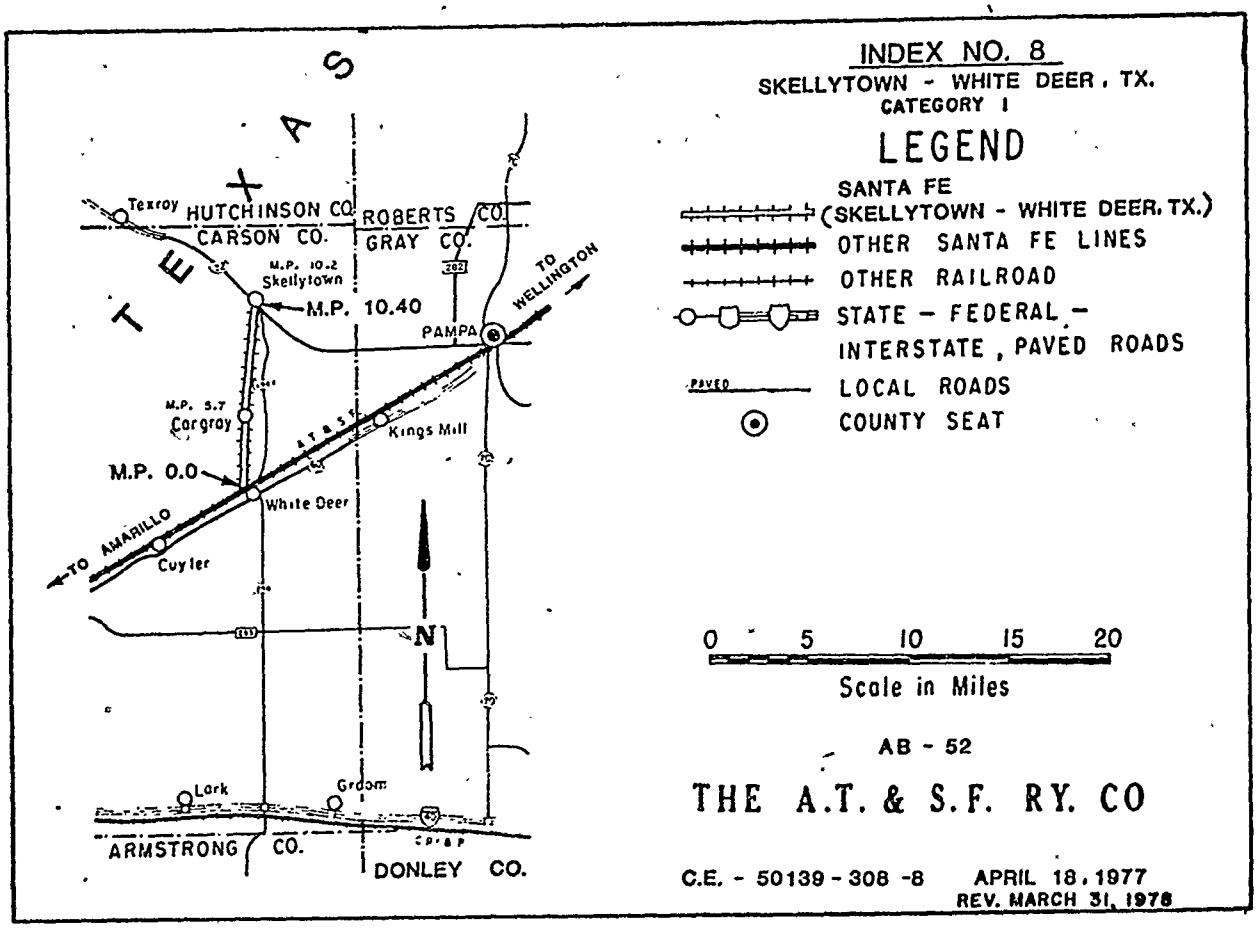
All lines or portions of lines potentially subject to abandonment which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues.

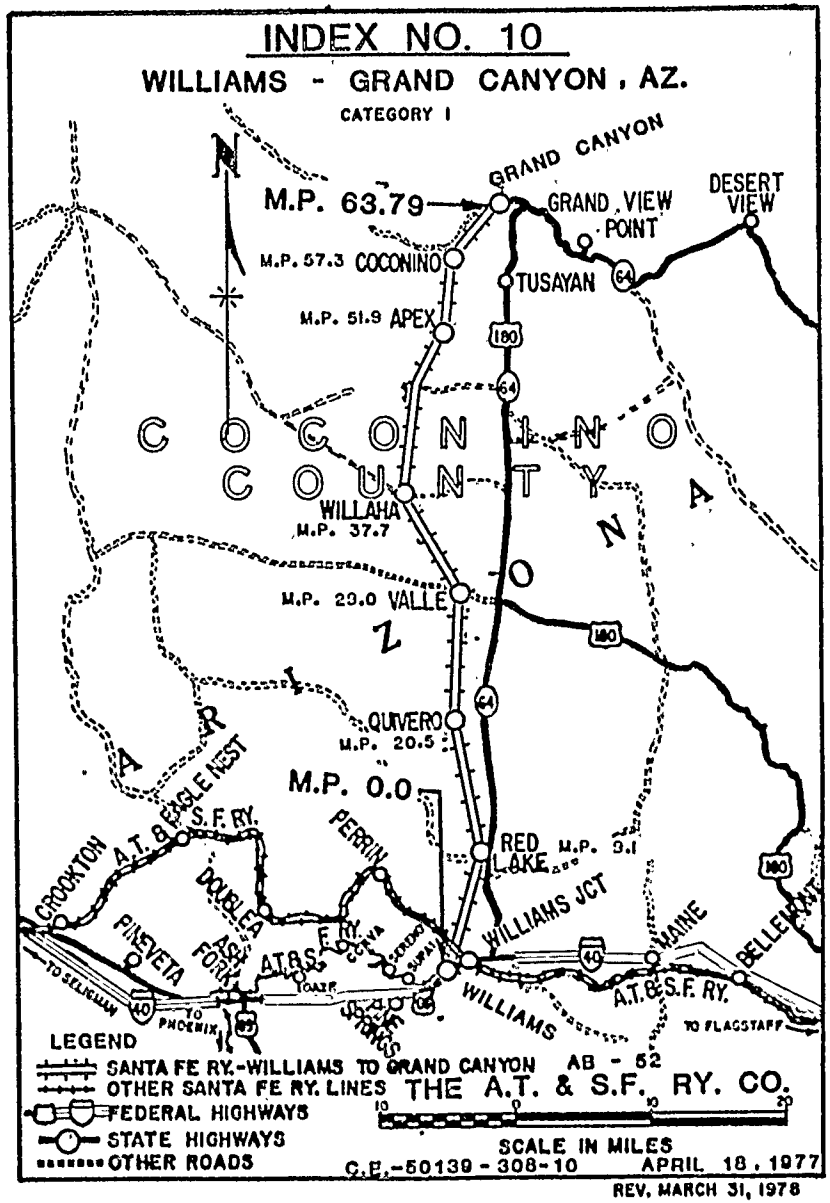
Map Code (Index No. 15)—Texas

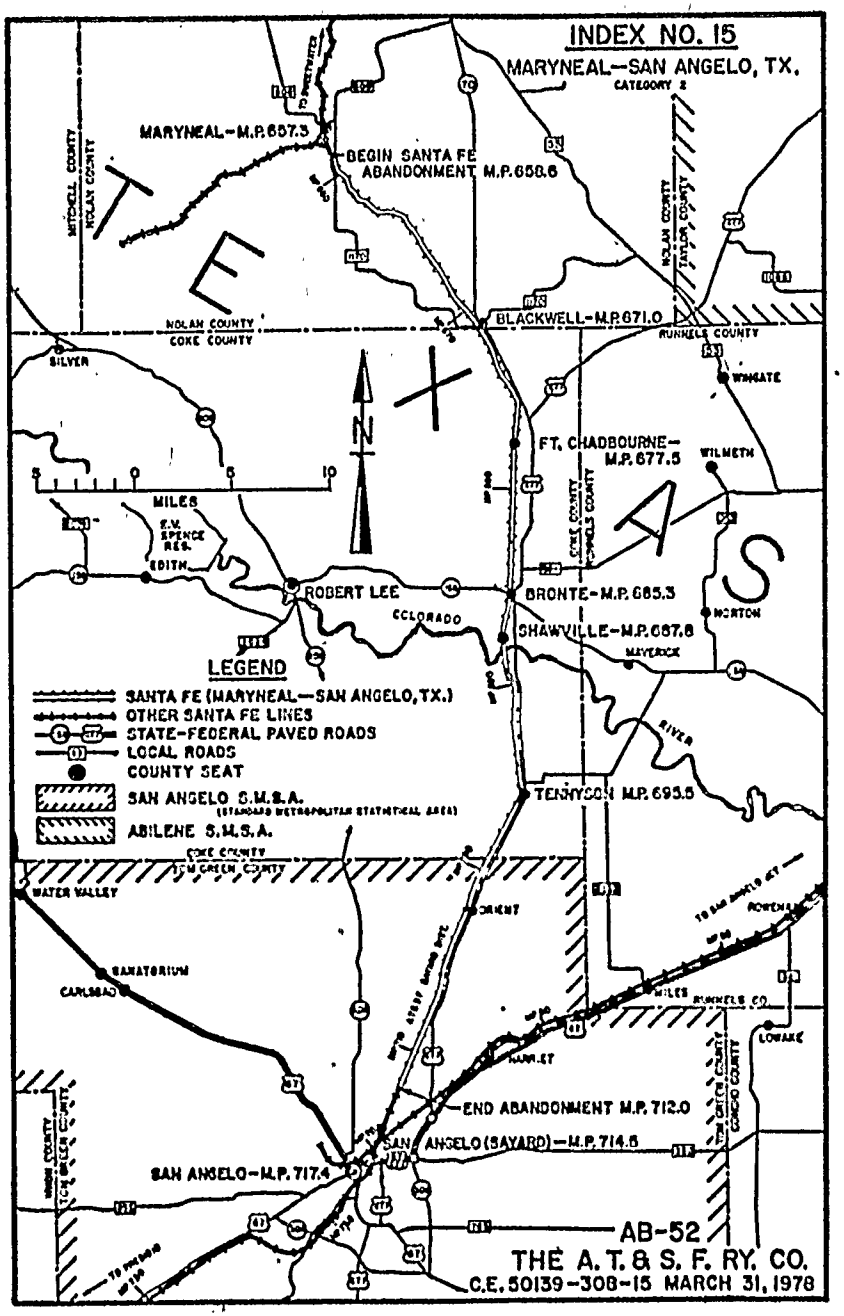
(a) Maryneal to San Angelo, a 53.4 mile segment of the Sayard District.
(b) Located entirely in the State of Texas.
(c) Located in Nolan, Coke, and Tom Green County.
(d) Milepost 658.6 to 712.0.
(e) Agency stations at Maryneal (Milepost 657.3), Sayard (Milepost 714.5) and San Angelo (Milepost 717.4).

[FR Doc. 78-26199 Filed 9-18-78; 8:45 am]


THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
LEGEND
INDEX NO. CATEGORY LOCATION
1 1 PAMPA , TX. - CLINTON , OK.
2 1 MINKLER - CELLA , CA.
3 2 BALDWIN - OTTAWA , KS.
4 2 METCALF - ANTHONY , KS.
5 2 WAYNOKA - BUFFALO , OK.
6 2 HARTMAN - MC CLAVE , CO.
7 2 CHERAW - SWINK , CO
8 2 WILEY - BIG BEND , CO.
9 2 WILSON JCT - LAMAR , CO.
10 1 SKELLYTOWN - WHITE DEER , TX.
11 2 WHITEFACE - BLEDSOE , TX.
12 1 WILLIAMS - GRAND CANYON , AZ.
13 2 LATON - LANARE , CA.
14 3 RICHMOND - B.C. JCT. , MO.
15 3 CUSHING - SHAWNEE , OK.
16 3 RICHMOND - OAKLAND , CA.
17 2 MARYNEAL - SAN ANGELO , TX.
SEE DETAILED MAPS
Santa Fe
AB - 52
C.E. NO. 50139 - 308 - E
CHICAGO , APRIL 18 , 1977


INDEX NO. 8
SKELLYTOWN - WHITE DEER , TX.
CATEGORY 1
LEGEND
SANTA FE (SKELLYTOWN - WHITE DEER, TX.)
OTHER SANTA FE LINES
OTHER RAILROAD
STATE - FEDERAL - INTERSTATE , PAVED ROADS
PAVED LOCAL ROADS
COUNTY SEAT
TEXAS
Texroy
HUTCHINSON CO.
CARSON CO.
ROBERTS CO.
GRAY CO.
M.P. 10.2
Skellytown
M.P. 10.40
PAMPA
TO WELLINGTON
M.P. 5.7
Cargray
Kings Mill
M.P. 0.0
White Deer
TO AMARILLO
Cuyler
N
Lark
Groom
ARMSTRONG CO.
DONLEY CO.
0 5 10 15 20
Scale in Miles
AB - 52
THE A.T. & S.F. RY. CO
C.E. - 50139 - 308 -8 APRIL 18 , 1977
REV. MARCH 31, 1978


INDEX NO. 10
WILLIAMS - GRAND CANYON, AZ.
CATEGORY I
N
M.P. 63.79
GRAND CANYON
GRAND VIEW POINT
DESERT VIEW
M.P. 57.3 COCONINO
TUSAYAN
M.P. 51.9 APEX
COCONINO COUNTY
ARIZONA
WILLAHA
M.P. 37.7
M.P. 29.0 VALLE
QUIVERO
M.P. 20.5
M.P. 0.0
RED LAKE M.P. 9.1
WILLIAMS JCT
MAINE
BELLEMONT
CROCKTON
A.T. & S.F. RY.
EAGLE NEST
PERRIN
DOUBLE A
PINEVETA
APEX FORK
A.T.&S.F. RY.
WILLIAMS
A.T. & S.F. RY.
TO FLAGSTAFF
TO SELIGMAN
TO PHOENIX
LEGEND
SANTA FE RY.-WILLIAMS TO GRAND CANYON
OTHER SANTA FE RY. LINES
FEDERAL HIGHWAYS
STATE HIGHWAYS
OTHER ROADS
AB - 52
THE A.T. & S.F. RY. CO.
SCALE IN MILES
C.E.-50139 - 308-10 APRIL 18, 1977
REV. MARCH 31, 1978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AB-52
THE A.T. & S. F. RY. CO.
C.E. 50139-308-15 MARCH 31, 1978

[7035-01]

[AB 167 (SDM)]

CONSOLIDATED RAIL CORP.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Consolidated Rail Corp., has filed with the Commission its amended color-coded system diagram map in docket No. AB 167 (SDM). The maps reproduced here in black and white are resonable reproductions of that amended system diagram map and the Commission on August 28, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 167 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

NOTICE

Consolidated Rail Corp. (Conrail) hereby gives public notice that it is filing with the Interstate Commerce Commission (ICC) an amendment to the system diagram map which it filed December 1, 1977, pursuant to ICC regulations (49 CFR §§ 1121.22 to 1121.23). Specifically, the Utica Branch between mile post 202.6 at Chenango Forks and mile post 231.0 at Norwich in Broome and Chenango Counties, N.Y. with freight stations at Greene, Brisben, and Oxford, has been reclassified from category 2 to category 5.

The Commission requires that a railroad company, when filing a system diagram map, place its rail lines in one of five categories. They are:

Category 1—Rail lines or portions thereof which Conrail anticipates will be the subject of abandonment or discontinuance applications within the next 3 years.

Category 2—Rail lines or portions thereof which Conrail has under study and believes may be the subject of future abandonment applications.

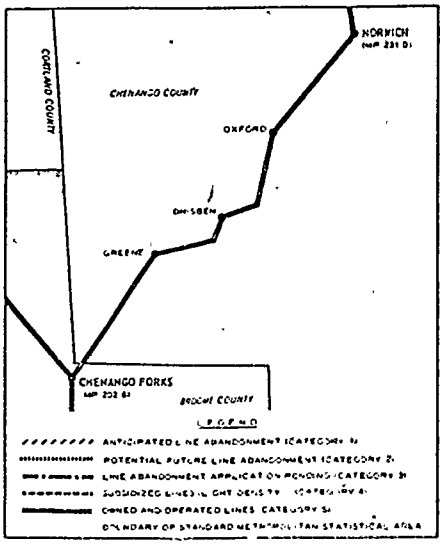
Category 3—Rail lines that are now the subject of pending abandonment or discontinuance applications.

Category 4—Rail line which are operated by Conrail under subsidy contracts with State agencies and/or shippers. (Conrail does not own these rail lines. They were excluded from the Conrail system when the bankrupt railroads of the Northeast/Midwest were re-structured.).

Category 5—All Conrail lines not placed in categories 1 through 4.

ICC regulations require that the system diagram map be accompanied by line descriptions, including, in the case of categories 1, 2, and 3, the names of the States and counties in which each line is located.

Below you will find a revised map covering the Conrail lines in this area and showing the categories in which these lines are now placed.



[FR Doc. 78-26197 Filed 9-18-78; 8:45 am]

[7035-01]

[Decisions Volume No. 30]

DECISION-NOTICE

SEPTEMBER 7, 1978.

The following applications are governed by Special Rule 247 of the Commission's Rules of Practice (49 CFR § 100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission on or

before October 19, 1978. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its applicaton shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is not a major Federal action significantly affecting the quality of the human environment.

It is ordered: In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

By the Commission, Review Board No. 3, Membes Parker, Fortier, and Hill.

H. G. Homme, Jr.,
Acting Secretary

MC 14252 (Sub-33F), filed July 10, 1978. Applicant: COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Road, Columbus, OH 43227. Representative: William C. Buckham (same address as applicant). To operate as a *common carrier, by motor vehicle, transporting: General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): (1) Between Terre Haute, IN and Danville, IL; from Terre Haute over U.S. Hwy 41 to Lyford, then over IN Hwy 163 to Clinton, then over IN Hwy 63 to junction U.S. Hwy 136, then over U.S. Hwy 136 to Danville, and return over the same route, serving all intermediate points, and the off route points of Cayuga, Covington, and Kingman, IN; (2) between Terre Haute, IN and Dana, IN; from Terre Haute over U.S. Hwy 41 to junction IN Hwy 63, then over IN Hwy 63 to junction IN Hwy 163, then over IN Hwy 163 to junction IN Hwy 71, then over IN Hwy 71 to Dana, IN, and return over the same route, serving all intermediate points, and the off route point of St. Bernice, IN; and (3) between Terre Haute, IN and Clinton, IN; from Terre Haute over U.S. Hwy 40 to West Terre Haute, then over U.S. Hwy 150 to junction unnumbered Hwy approximately 8 miles north of junction U.S. Hwys 40 and 150, then over unnumbered Hwy to Clinton, and return over the same route, serving all intermediate points. (Hearing site: Indianapolis, IN, or Springfield, IL.)

MC 23618 (Sub-34F), filed August 15, 1978. Applicant: McALLISTER TRUCKING CO., a corporation, d.b.a. MATCO, P.O. Box 2377, Abilene, TX 79604. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting *prefabricated metal buildings,* knockeddown, or in sections from Houston, TX, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Houston or Dallas, TX.)

MC 29328 (Sub-6F), filed August 14, 1978. Applicant: SCHIEK MOTOR EXPRESS, INC., a Delaware corporation, 90 Casseday Avenue, Joliet, IL 60432. Representative: Eugene L. Cohn, One North LaSalle Street, Chicago, IL 60602. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe and fittings,* and *materials* used in the installation of plastic pipe, from the facilities of Johns-Manville Sales Corp., at or near Wilton, IA, to points IL, IN, and WI; (2) *building materials and cement pipe,* from the facilities of Johns-Manville Sales Corp., at or near Waukegan, IL, to points in IN and MO; and (3) *insulation board,* from the facilities of Johns-Manville Perlite Corp., at or near Rockdale, IL, to points in IN, IA, MO, and WI. (Hearing site: Chicago, IL.)

MC 48958 (Sub-158F), filed August 10, 1978. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., A Nebraska Corporation, 510 East 51st Avenue, P.O. Box 16404, Denver, CO 80216. Representative: Lee E. Lucero (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Brass, bronze, or copper rods,* drawn or extruded, *billets, bars, rough cast, cakes, cathodes, ingots, pigs, and slabs,* from the facilities of Inspiration Consolidated Copper Co., at or near Globe, Inspiration, and Miami, AZ, to Hoisington, KS. (Hearing site: Phoenix, AZ.)

MC 61231 (Sub-126F), filed July 26, 1978. Applicant: EASTER ENTERPRISES, INC. d.b.a. ACE LINES, INC., P.O. Box 1351, Des Moines, IA 50305. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel tanks, storage bins,* and *materials* used in the construction of iron and steel tanks and storage bins, from the facilities of (1) Trico Industries, Inc., Columbian Steel Tank Division, at or near Kansas City, MO, and (2) Butler Manufacturing Co., at or near Kansas City MO, to points in AZ, CO, ID, IL, IN, IA, MI, MN, MT, NE, ND, NM, OK, SD, TX, WA, WI, and WY. (Hearing site: Kansas City, MO.)

MC 89084 (Sub-6F), filed July 14, 1978. Applicant: INTERSTATE HEAVY HAULING, INC., 12986 Northeast Whitaker Way, Portland, OR 97220. Representative: Lawrence V. Smart, Jr., 419 Northwest 23d Avenue, Portland, OR 97210. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting contractors' *equipment and machinery* which by reason of size or weight requires the use of special equipment, and contractors' *equipment and machinery parts,* between points in OR, WA, and CA. (Hearing site: Portland, OR.)

MC 93649 (Sub-22F), filed August 14, 1978. Applicant: GAINES MOTOR LINES, INC., P.O. Box 1549, Hickory, NC 28601. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Textiles and textile products,* from points in GA, to points in CT, DE, MD, MA, NJ, NY, PA, and RI. (Hearing site: New York, NY.)

MC 104140 (Sub-205F), filed August 14, 1978. Applicant: OSBORNE TRUCK LINE, INC., 516 North 31st Street, Birmingham, AL 35202. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Alluminum and aluminum products;* and (2) *materials and equipment* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of Reynolds Metals Co., at or near Listerhill and Sheffield, AL, on the one hand, and, on the other, points in AL, AR, CT, DE, IA, KY, LA, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TX, VT, VA WV, WI, and DC. (Hearing site: Birmingham, AL.)

MC 105813 (Sub-244F), filed July 24, 1978. Applicant: BELFORD TRUCKING CO., INC., 1759 Southwest 12th Street, P.O. Box 2009, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts,* and *articles* distributed by meat packing houses, as described in sections A and C of Appendix I to the report in Descriptions In Motor Carreir Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from Wilmington, NC, to points in FL. (Hearing site: Chicago, IL.)

MC 105813 (Sub-245F), filed July 28, 1978. Applicant: BELFORD TRUCKING CO., INC., 1759 Southwest 12th Street, P.O. Box 2009, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts,* and *articles* distributed by meat packinghouses, as described in sections A and C of Appendix I to the report in Descriptions In Motor Carreir Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from Nebraska City, NE, to points in AL, FL, GA, MS, NC, SC, and TN. (Hearing site: Chicago, IL.)

MC 106398 (Sub-823F), filed August 16, 1978. Applicant: NATIONAL TRAILER CONVOY, INC, 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Cast iron pipe and fittings;* and (2) *accessories for cast iron pipe,* from the facilities of McWane Cast Iron Pipe Co., at or near Birmingham, AL, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Birmingham, AL.)

NOTE.—In view of the findings in MC 106398 (Sub-741) of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106603 (Sub-130F), filed July 31, 1978. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street SW., P.O. Box 8099, Grand Rapids, MI 49508. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plywood, hardboard, and composition board,* from Camden, NJ, to points in IL, IN, IA, KY, MI, MO, OH, PA, TN, WV, and WI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 106674 (Sub-332F), filed July 13, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indinapolis, IN 46204. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Glass containers* and *closures for glass containers,* from the facilities of Glass Containers Corp., at or near Gas City and Indianapolis, IN, to points in AL, AR, GA, IL, KY, LA, MI, MS, MO, OH, and TN; and (2) *materials, equipment, and supplies used in the manufacture, distribution, and sale of glass containers,* in the reverse direction. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 107012 (Sub-274F), filed July 12, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *New furniture,* (1) from points in SC, to points in AL, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, NH, NJ, NY, NC (except Claremont, NC), OH, PA, RI, TN, VT, VA, WV, and DC, (2) from points in NC, to points in AL, CT, DE, FL, GA, IA, IL, IN, KY, LA, MA, MD, ME, MI, MN, MS, ND, NH, NJ, NY, OH, PA, RI, SC, SD, TN, VA, VT, WV, and DC, (3) from points in Hamblen County, TN, to points in AL, FL, GA, IA, KY, LA, MN, NC (except Claremont, NC), ND, SC, and VA, (4) from points in VA, to points in AL, CT, DE, FL, GA, KY, LA, MA, MD, ME, MS, NC (except Claremont, NC), NH, NJ, NY, PA, RI, SC, TN, VT, and DC, and (5) from Galax, Roanoke, Damascus, Stanleytown, Bassett, Pulaski, and Martinsville, VA, to points in AR, CO, IA, IL, IN, KS, MI, MN, ND, NM, OH, OK, SD, and TX, restricted in (1) through (5) to the transportation of traffic originating at or destined to the facilities of the J. C. Penney Co., and against the transportation of new furniture from High Point and Hudson, NC, and points in Lincoln and Catawba Counties, NC, to Wilmington, DE, Baltimore, MD, Freeport, NY, points in the New York, NY, commercial zone as defined by the Commission in 1 MCC 665, and those in PA, NJ, SC, VA, WV, and DC. (Hearing site: Chicago, IL, New York, NY.)

MC 107403 (Sub-1105F), filed July 31, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid sugar, corn syrup, and high fructose corn syrup with blends of liquid sugar,* from Supreme, LA, to points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 107403 (Sub-1106F), filed July 28, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid chemicals,* in bulk, in tank vehicles, from Peachtree City, GA, to points in the

United States (except AK and HI). (Hearing site: Washington, DC.)

MC 107743 (Sub-47F), filed July 28, 1978. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456 T.A., Spokane, WA 99220. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Harris Tube, at or near Los Angeles, CA, to points in OR, WA, and ID. (Hearing site: Los Angeles, CA, or Seattle, WA.)

MC 109692 (Sub-63F), filed July 12, 1978. Applicant: GRAIN BELT TRANSPORTATION CO., a corporation, Route 13, Kansas City, MO 64161. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64112. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors*, and *farm, industrial, construction, and excavating machinery*, and (2) *parts, attachments, and accessories* for the commodities in (1) above, from the facilities of J. I. Case Co., Inc., at or near Burlington, IA, to points in AZ, AR, LA, MS, NM, OK, and TX. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 109692 (Sub-65F), filed July 13, 1978. Applicant: GRAIN BELT TRANSPORTATION CO., a corporation, Route 13, Kansas City, MO 64161. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64112. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products*, and *lumber mill products*, the facilities of Weyerhaeuser Co., at or near West Memphis, AR, to points in CO, IL, IN, IA, KS, MI, MN, MO, NE, NM, ND, OK, SD, TX, and WI. (Hearing site: Chicago, IL, or Kansas City, MO.)

MC 111231 (Sub-244F), filed July 24, 1978. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902. To operate as a *common carrier*, by motor vehicle, over irreguar routes, transporting: *Cheese, cheese products*, and *synthetic cheese*, from the facilities of L. D. Schreiber Cheese Co., Inc., at or near Carthage and Monett, MO, to La Grange, GA. (Hearing site: Chicago, IL, or Washington, DC.)

MC 111231 (Sub-245F), filed July 26, 1978. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: John C. Everett, P.O. Box A, 140 East Buchanan, Prairie Grove, AR 72753.To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from the facilities of Northwestern Steel & Wire Co. at or near Sterling and Rock Falls, IL, to points in AR, LA, MS, TN, MO, OK, and TX; and (2) *equipment, materials, and supplies* used in the manufacture and distribution of commodities named in (1) above, in the reverse direction. (Hearing site: Sterling or Rock Falls, IL.)

MC 112617 (Sub-402F), filed July 24, 1978. Applicant: LIQUID TRANSPORTERS, INC., 1292 Fern Valley Road, P.O. Box 21395, Louisville, KY 40221. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irreguar routes, transporting: *Petroleum pitch*, in bulk, in tank vehicles, from Catlettsburg, KY, to points in AL, AR, CT, DE, FL, GA, IA, IL, IN, LA, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WI, WV, and DC. (Hearing site: Louisville, KY, or Washington, DC.)

MC 113434 (Sub-103F), filed May 8, 1978, and previously noticed in the FEDERAL REGISTER issue of June 15, 1978. Applicant: GRA-BELL TRUCK LINE, INC., 679 Lincoln Avenue, Holland, MI 49423. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, additives, and materials and suppplies* used in the manufacture and distribution of animal feed (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, on the one hand, and, on the other, points in IN, MI, OH, PA, and WV, restricted to the transportation of traffic originating at or destined to the facilities of Kal Kan Foods, Inc., at or near Matton, IL. This republication corrects the destination state "WI" to read "WV". (Hearing site: Chicago, IL, or Washington, DC.)

MC 113855 (Sub-439F), filed July 10, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a North Dakota corporation, 2450 Marion Road SE., Rochester, MN 55901. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1)(a) *Logging, forestry, and construction equipment*, (b) *canopies, cabs, contractors' equipment, and safety guards*, (c) *attachments* for the commodities described in (a) and (b) above, and (d) *parts* for the commodities described in (a), (b), and (c) above, from Eugene, OR, to points in the United States (including AK but excluding HI); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Portland, OR, or Seattle, WA.)

MC 114552 (Sub-169F), filed July 13, 1978. Applicant: SENN TRUCKING CO., a corporation, P.O. Drawer 220, Newberry, SC 29103. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of National Steel Corp., at or near (a) Steubenville, OH, and (b) Weirton, WV, to points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, and VA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 114632 (Sub-175F), filed July 17, 1978. Applicant: APPLE LINES INC., P.O. Box 287, Madison, SD 57042. Representative: Michael L. Carter (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs* (except commodities in bulk), (1) between Chicago, IL, and New Hampton, IA, and (2) between Chicago, IL, and New Hampton, IA, on the one hand, and, on the other, points in CT, MA, NJ, and NY, restricted to the transportation of traffic originating at and destined to the indicated points. (Hearing site: Chicago, IL, or Minneapolis, MN.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 114632 (Sub-176F), filed July 17, 1978. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: Michael L. Carter, (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from Battle Creek, MI, and Lancaster and Sharonville, OH, to Clearfield, UT. (Hearing site: St. Louis or Kansas City, MO.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 114897 (Sub-127F), filed July 17, 1978. Applicant: WHITFIELD TANK LINES, INC., a Delaware corporation, 485 Coates Drive, P.O. Box 12278, El Paso, TX 79912. Representative: J. E. Gallegos, 215 Lincoln Avenue, P.O. Box 2228, Santa Fe, NM 87501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphuric acid*, in bulk, in tank vehicles, (1) from El Paso, TX, and points in NM and AZ, to points in TX, and (2) between points in NM. (Hearing site: El Paso, TX, or Santa Fe, NM.)

MC 114969 (Sub-83F), filed August 16, 1978. Applicant: PROPANE TRANSPORT, INC., P.O. Box 232,

Milford, OH 45150. Representative: James R. Stiverson, 1396 West Fifth Avenue, Columbus, OH 43212. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gas,* in bulk, in tank vehicles, from the facilities of Ashland Oil, Inc., at or near Catlettsburg, KY, to the facilities of Ashland Oil, Inc., at Canton, OH. (Hearing site: Washington, DC, or Columbus, OH.)

NOTE.—Certificate shall be limited, in point of time, to a period expiring 5 years from the date of issuance of the certificate.

MC 115648 (Sub-30F), filed August 14, 1978. Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82201. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Salt and salt products,* from the facilities of American Salt Co., at or near Grantsville, UT, to points in Platte County, WY. (Hearing site: Cheyenne, WY, or Denver, CO.)

MC 115904 (Sub-115F), filed June 8, 1978, and previously noticed as Sub-102F in the, FEDERAL REGISTER of August 22, 1978. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake, UT 84111. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Moulded rubber and plastic products,* and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of the commodities named in (1) above, between the facilities of Entek Corp. of America, at or near Irving, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Dallas, TX, or Washington, DC.)

NOTE.—The purpose of this republication is to show the correct docket number as MC 115904 (Sub-115F).

MC 115904 (Sub-116F), filed June 12, 1978, and previously noticed as Sub-102F in the FEDERAL REGISTER of July 25, 1978. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel articles,* (1) from Chicago, IL; Wilmington, DE; Canonsburg, PA; Jersey City and Camden, NJ; New Orleans, LA; Savannah, GA; and Houston, TX, to those points in the United States in and east of AZ, CO, ND, NE, and SD, and (2) from Los Angeles, CA, to points in AZ, CA, CO, and NM. (Hearing site: Portland, OR, or Washington, DC.)

NOTE.—The purpose of this republication is to show the correct docket number as MC 115904 (Sub-116F).

MC 116254 (Sub-210F), filed July 10, 1978. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35630. Representative: Hampton M. Mills (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fabricated metal articles, and iron and steel articles,* from Stafford, KS, and Tulsa, OK, to points in RI, CT, OK, TX, NE, KS, MN, IA, MO, AR, LA, MS, AL, GA, CO, FL, NC, SC, TN, KY, WV, VA, MD, DE, PA, OH, IN, IL, WI, MI, NJ, NY, VT, NH, ME, MA, and DC. (Hearing site: Kansas City, KS, or Washington, DC.)

MC 116763 (Sub-425F), filed July 31, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Petfood, animal feed, fish feed, and poultry feed* (except commodities in bulk), from Muscatine, IA, to points in AL, AR, CT, DE, FL, GA, IL, IA, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 116763 (Sub-426F), filed July 31, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irreguar routes, transporting: (1) *Pulpboard products,* from Germantown, WI, to points in AR, IL, IN, IA, KS, KY, MD, MI, MO, NC, OH, OK, PA, TN, VA, TX, and WV, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of pulpboard products, in the reverse direction. (Hearing site: Milwaukee, WI.)

MC 116763 (Sub-427F), filed July 31, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irreguar routes, transporting: (1) *Paper and paper products,* from the facilities of Bowater Southern Paper Corp., at or near Calhoun, TN, to points in CT, IA, ME, MA, MN, NH, NJ, NY, PA, and VT, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of paper and paper products, in the reverse direction. (Hearing site: Chattanooga, TN.)

MC 117119 (Sub-699F), filed August 10, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: M. M. Geffon, P.O. Box 338, Willingboro, NJ 08046. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals* (except in bulk), from Easton, PA, to points in ID, IL, LA, MN, OK, UT, and WY, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Columbus, OH, or Washington, DC.)

MC 117883 (Sub-229F), filed August 3, 1978. Applicant: SUBLER TRANSFER, INC., 1 Vista Drive, Versailles, OH 45380. Representative: Neil E. Hannan, P.O. Box 62, Versailles, OH 45380. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs,* from the facilities of United Products Co., at or near Gaithersburg, MD, to points in IN, IL, IA, KS, KY, MN, MI, MO, OH, and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Washington, DC.)

MC 118159 (Sub-281F), filed August 7, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cotton bale ties and bagging,* from Houston and Galveston, TX, to points in OK and TX. (Hearing site: Houston, TX.)

MC 118159 (Sub-282F), filed August 14, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., a Louisiana corporation, P.O. Box 51636, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from points in GA, to points in the United States (except AK and HI). (Hearing site: Atlanta, GA.)

MC 118159 (Sub-283F), filed August 17, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., a Louisiana corporation, P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1)

Battery boxes, from Indianapolis, IN, and Philadelphia, MS, to points in AL, CT, DE, GA, IN, KS, KY, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, and WI; and (2) *equipment and materials* used in the manufacture and distribution of battery boxes, in the reverse direction. (Hearing site: Chicago, IL.)

MC 118159 (Sub-284F), filed August 17, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., a Louisiana corporation, P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by grocery and food business houses and drugstores (except frozen commodities and commodities in bulk), (1) from Atlanta, GA, to points in AL, AR, KY, LA, and TN, and (2) from Houston, TX, to points in AR, LA, MS, and OK. (Hearing site: Chicago, IL.)

MC 118159 (Sub-285F), filed August 18, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., a Louisiana corporation, P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, Fl 33308. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are dealt in or used by manufacturers, converters, and distributors of cellulose materials and products and paper products (except commodities in bulk), from points in FL, GA, NC, SC, and VA, to points in AL, AR, CT, DE, FL, GA, KS, KY, LA, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OK, PA, RI, SC, TN, TX, VT, VA, WV, and DC; and (2) *equipment and materials* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Atlanta, GA.)

MC 118159 (Sub-286F), filed August 18, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., a Louisiana corporation, P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Traffic control products* and *equipment and materials* used in the maintenance and installation of traffic control products, from the facilities of Pave-Mark Corp., at Atlanta, GA, to points in the United States (except AK and HI); and (2) *equipment and materials* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Atlanta, GA.)

MC 119654 (Sub-53F), filed July 13, 1978. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th Street, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Apple juice, vinegar, and water,* in containers, from Coloma and Hartford, MI, to points in IL, IN, OH, and WI; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 123061 (Sub-99F), filed July 24, 1978. Applicant: LEATHAM BROTHERS, INC., 46 Orange Street, P.O. Box 16026, Salt Lake City, UT 84116. Representative: Harry D. Pugsley, 310 South Main, Salt Lake City, UT 84101. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Salt and salt products,* from points in Toole County, UT, to points in CA. (Hearing site: Salt Lake City, UT, or Boise, ID.)

MC 124887 (Sub-60F), filed July 24, 1978. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel articles,* from the facilities of Wheeling-Pittsburgh Steel Corp., at or near (a) Canfield, Martins Ferry, Mingo Junction, Steubenville, and Yorkville,-OH, (b) Allenport and Monessen, PA, and (c) Beechbottom, Benwood, and Wheeling, WV, to points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, and VA. (Hearing site: Jacksonville or Tallahassee, FL.)

MC 124887 (Sub-61F), filed July 25, 1978. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber* and *cross ties,* from points in GA, to ponts in AL, FL, SC, NC, and TN. (Hearing site: Jacksonville or Tallahassee, FL.)

MC 124887 (Sub-62F), filed July 25, 1978. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plywood* and *hardboard paneling,* from the facilities of Welch Forest Products, at or near East Camden, AR, to points AL, FL, GA, MS, NC, SC, TN, and VA. (Hearing site: Jacksonville or Tallahassee, FL.)

MC 125254 (Sub-44F), filed July 13, 1978. Applicant: MORGAN TRUCKING CO., P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, over irreguar routes, transporting: *Glass containers, container accessories, and materials, equipment, and supplies* used in the manufacture and distribution of glass containers and container accessories (except in bulk, in tank vehicles), between the facilities of Brockway Glass Co., Inc., in (a) Washington County, PA, (b) Muskingum County, OH, and (c) Madison County, IN, on the one hand, and, on the other, points in Johnson, Linn, Clinton, Scott, and Muscatine Counties, IA. (Hearing site: Des Moines, IA, or Pittsburgh, PA.)

MC 128007 (Sub-126F), filed July 24, 1978. Applicant: HOFER, INC., 20th and Bypass, P.O. Box 583, Pittsburgh, KS 66762. Representative: Larry E. Gregg, 641 Harrison Street, Topeka, KS 66603. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Architectural and structural metals,* and *accessories* for architectural and structural metals, from points in Crawford County, KS, to points in the United States (except AK and HI); and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, in the reverse direction. (Hearing site: Kansas City, MO.)

MC 128273 (Sub-313F), filed July 27, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Sugar,* in containers, from Sugar Land, TX, to points in the United States (except AK, HI, and TX). (Hearing site: Houston, TX, or Washington, DC.)

MC 128343 (Sub-42F), filed August 2, 1978. Applicant: C-LINE, INC., Tourtellot Hill Road, Chepachet, RI 02814. Representative: Ronald N. Cobert, Suite 501, 1730 M Street NW., Washington, DC 20036. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Plastic materials, plastic products,* and *supplies* used in the manufacture and distribution of plastic materials and plastic products, (except commodities in bulk), between Hemingway, SC, Jerome, ID, Halls, TN, and North Smithfield, RI, on the one hand, and, on the other, ports of entry on the international boundary line between the

United States and Canada, at points in ND, under a continuing contract with Tupperware Co., of Woonsocket, RI. (Hearing site: Providence, RI, or Boston, MA.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 128648 (Sub-13F), filed August 17, 1978. Applicant: TRANS-UNITED, INC., a Texas corporation, 425 West 152d Street, P.O. Box 2081, East Chicago, IN 46312. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Water heaters and parts for water heaters;* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of water heaters, (a) from the facilities of Bradford-White Corp., at or near Middleville, MI, and Vernon, CA, to points in the United States (except AK and HI), and (b) from Toledo, OH, to Vernon, CA, under a continuing contract with Bradford-White Corp., of Philadelphia, PA. (Hearing site: Chicago, IL.)

MC 133119 (Sub-137F), filed August 7, 1978. Applicant: HEYL TRUCK LINES, INC., P.O. Box 206, Akron, IA 51001. Representative: A. J. Swanson, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts* and *articles* distributed by meat packinghouses, (except hides and commodities in bulk), as described in section A and C of Appendix I to the report in Description in Motor Carrier Certificates, 61 MCC 209 and 766, from St. Louis, MO, to points in AL, AR, GA, GL, KY, LA, MS, NC, SC, TN, Dakota County, NE, and Lyon County, KS, restricted to the transportation of traffic originating at the named orgins and destined to the indicated destinations. (Hearing site: St. Louis, MO, or Omaha, NE.)

MC 133221 (Sub-31F), filed July 24, 1978. Applicant: OVERLAND CO., INC., 1991 Buford Hwy, Lawrenceville, Ga. 30245. Representative: Alvin Button (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Polystyrene products*, from the facilities of Dolco Packaging Corp., at or near Dallas, TX, to those points in the United States on and east of U.S. Hwy 85. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 133591 (Sub-48F), filed July 28, 1978. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mount Vernon, MO 65712. Representative: Harry Ross, 58 South Main Street, Winchester, KY 40391. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastics* and *plastic articles*, (except commodities in bulk), from the facilities of Union Carbide Corp., at or near Rogers, AR, to Salt Lake City, UT. (Hearing site: Kansas City, MO, or Washington, DC.)

NOTE.—Dual operations may be involved in this proceeding.

MC 133689 (Sub-214F), filed August 11, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street SW., New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electric ranges* and *microwave ovens*, and (2) *such commodities* as are used in the manufacture and distribution of the commodities in (1) above, between the facilities of Litton Microwave Cooking Products, Litton Systems, Inc., at Minneapolis, MN, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, and DC. (Hearing site: St. Paul, MN.)

MC 134282 (Sub-29F), filed July 17, 1978. Applicant: ENNIS TRANSPORTATION CO., INC., P.O. Drawer 776, Ennis, TX 75119. Representative: William D. White, Jr., 2505 Republic National Bank Tower, Dallas, TX 75201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, building, and insulation materials* (except iron and steel articles and commodities in bulk), between the facilities of CertainTeed Corp., in Dallas County, TX, and points in AR, LA, OK, MS, and MN. (Hearing site: Dallas, TX, or New Orleans, LA.)

MC 135082 (Sub-73F), filed July 11, 1978. Applicant: ROADRUNNER TRUCKING, INC., P.O. Box 26748, 415 Rankin Road NE., Albuquerque, NM 87125. Representative: Randall R. Sain (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paint and insulation materials*, from Phoenix, AZ, to points in CA, CO, ID, MT, NV, NM, OK, OR, TX, UT, and WA. (Hearing site: Albuquerque, NM, or Phoenix, AZ.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 135643 (Sub-7F), filed July 27, 1978. Applicant: SAFE TRANSPORT, INC., 610 Cooper Street, Hamilton, IL 62341. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid asphalt and liquid residual fuel oils*, from Meredosia, IL, to Kirksville, MO, under a continuing contract with Kirksville Emulsified Asphalt, Inc., of Kirksville, MO. (Hearing site: St. Louis, MO, or Chicago, IL)

MC 136343 (Sub-149F), filed August 3, 1978. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies* used in the manufacture of woodpulp, woodpulp boards, and wrapping paper (except commodities in bulk), from points in GA, AL, SC, and NC, to the facilities of the Chesapeake Corp. of Virginia, at or near West Point, VA, restricted to the transportation of traffic originating at the indicated origins and destined to the named destination facilities. (Hearing site: Norfolk, VA, or Washington, DC.)

MC 136464 (Sub-39F), filed July 10, 1978. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3961, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washingotn, DC 20005. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Textiles, textile products, and materials and supplies used in the manufacture and sale of textiles and textile products*, from the facilities of J. P. Stevens & Co., Inc., at or near Clemson, SC, to points in CA, under a continuing contract with J. P. Stevens & Co., Inc., of Greensboro, NC. Hearing site: Greensboro, NC.)

NOTE.—Dual operations may be involved in this proceeding.

MC 136981 (Sub-9F), filed May 3, 1978, previously noticed in the FEDERAL REGISTER issue of June 29, 1978. Applicant: BLAIR CARTAGE, INC., 13658 Auburn Road, P.O. Box 52, Newbury, OH 44065. Representative: Lewis S. Witherspoon, 88 East Broad Street, Columbus, OH 43215. Authority granted to operate as a *contract carrier*, by motor vehicle, over irreguar routes, transporting: (1) *Such commodities* as are dealt in by wholesale, retail, and chain grocery and food business houses, from the plant site of the Clorox Co., at or near Chicago, IL, to Cleveland, OH, and points in IN; and (2) *animal litter*, from Kansas City, MO, to Chicago, IL, under a continuing contract, or contracts, with the Clorox Co., of Oakland, CA. (Hearing site: Cleveland, OH.) The republication indicates the correct location of the Clorox Co.

NOTE.—The carrier must satisfy the Commission that its operations will not result in objectionable dual operations because of its authority under MC 134798.

MC 138157 (Sub-72F), filed May 8, 1978, and previously noticed in the

FEDERAL REGISTER issue of June 15, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37410. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Motor vehicle parts and accessories, and materials, equipment, and supplies* used in the manufacture and distribution of motor vehicle parts and accessories (except commodities in bulk, in tank vehicles), (a) from the facilities of Maremont Corp., at or near Loudon and Ripley, TN, to those points in the United States in and east of MN, IA, MO, AR, and TX, and (b) from Harvey, IL, and Bayonne, NJ, to Loudon and Ripley, TN; and (2) (i) *commodities* named in (1) above (except commodities in bulk, in tank vehicles), and (ii) *empty trailers,* between Knoxville, Alcoa, and Oak Ridge, TN, on the one hand, and, on the other, the facilities of Maremont Corp., at or near Loudon, TN, restricted in (2)(i) above to the transportation of traffic having a subsequent movement by rail, in (2)(ii) above to the transportation of traffic having a prior movement by rail and destined to the named destination points, or having a subsequent movement by rail and originating at the named origin points, in (1) and (2) above against the transportation of traffic which because of size or weight require the use of special equipment, and in (1) and (2)(i) above to the transportation of traffic originating at or destined to the named points. Condition: Applicant must request cancellation of its authority in MC 134150 (Sub-3) prior to issuance of a certificate in this matter. (Hearing site: Chicago, IL.)

NOTE.—This republication modifies the exceptions and restrictions previously noticed. Applicant states the purpose of this application is to convert the contract carrier authority held by it in MC 134150 (Sub-3) to common carrier authority. Dual operations may be at issue in this proceeding.

MC 138313 (Sub-39F), filed August 3, 1978. Applicant: BUILDERS TRANSPORT, INC., 409 14th Street SW., Great Falls, MT 59404. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Paper bags and packaging materials,* from ports of entry on the international boundary line between the United States and Canada, in ID and MT, and points in OR and WA, to the facilities of American Colloid Co., in (1) Butte County, SD, (2) Bowman County, ND, (3) WY, and (4) MT. (Hearing site: Washington, DC.)

MC 138882 (Sub-106F), filed July 13, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber, particleboard, wood turnings, and laminated or solid squares,* from points in CA, WA, and OR, to points in ID, TX, OK, AR, and AL. (Hearing site: Temple, TX, or Montgomery, AL.)

MC 138882 (Sub-107F), filed July 12, 1978. Applicant: WILEY SANDERS, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 537, Gladstone, NJ 07934. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber,* from the facilities of Scotch Lumber Co., at or near Fulton, AL, to points in FL, GA, IL, IN, ID, IA, LA, KY, MI, MN, MS, MO, NC, OH, SC, SD, TN, TX, and WI. (Hearing site: Birmingham or Montgomery, AL.)

MC 139273 (Sub-3F), filed July 31, 1978. Applicant: KINGS COUNTY TRUCK LINES, a corporation, P.O. Box 1016, Tulare, CA 93274. Representative: Manuel Espinola (same address as applicant). To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Ice cream, ice cream mix, ice milk, water ice, and sherbet,* from the facilities of Dreyer's Grand Ice Cream, Inc., at or near San Leandro and Sacramento, CA, to Carson City, Reno, and Sparks, NV, under a continuing contract with Dreyer's Grand Ice Cream, Inc., of Oakland, CA. (Hearing site: San Francisco or Fresno, CA.)

MC 139923 (Sub-46F), filed August 2, 1978. Applicant: MILLER TRUCKING CO., INC., P.O. Drawer "D", Stroud, OK 74079. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Paper processing machines and meat processing machines,* from Park Forest, IL, and Plymouth, IN, to points in CA, CO, NE, OR, TX, and WA. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 140123 (Sub-6F), filed July 31, 1978. Applicant: GRAHAM TRANSFER, INC., Route 2, Box 44, Linden, TN 37096. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel tubing, steel coils, and steel bars,* from Chicago, IL, to the facilities of Linden Products Co., at or near Linden, TN. (Hearing site: Nashville, TN.)

MC 140511 (Sub-7F), filed July 26, 1978. Applicant: AUTOLOG CORP., a Delaware corporation, 319 West 101st Street, New York, NY 10025. Representative: Larsh B. Mewhinney, 555 Madison Avenue, New York, NY 10022. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Used motor vehicles,* in secondary movements, in truckaway service; and (2) *baggage, sporting equipment,* and *personal effects* moving with the commodities named in (1) above, between Chicago, IL, Detroit, MI, Cleveland, Columbus, and Cincinnati, OH, Indianapolis, IN, Darlington, SC, High Point, NC, Fredericksberg, VA, points in NY, NJ, MA, CT, PA, DE, and MD, on the one hand, and, on the other, Atlanta, GA, Columbia and Darlington, SC, and points in FL. (Hearing site: New York, NY.)

MC 140829 (Sub-130F), filed August 16, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Confectionery* (except in bulk, in tank vehicles), from Lufkin, TX, to Baltimore, MD, Philadelphia, PA, New York, NY, and points in NJ, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 140829 (Sub-131F), filed August 16, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, U.S. Hwy. 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Orange juice, grapefruit juice,* and *lemonade* (except in bulk, in tank vehicles), from the facilities of World Citrus, Inc., at Winston-Salem, NC to points in IN, KY, MN, MO, and OH, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 140829 (Sub-132F), filed August 16, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, U.S. Hwy. 20, Sioux City, IA 51102. Repre-

sentative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, and (2) *malt beverage containers, packaging material, pallets*, and *scrap malt beverage containers* (except commodities in bulk, in tank vehicles), between Golden, CO, on the one hand and, on the other, points in IA and MO, restricted to the transportation of traffic originating at and destined to the named points. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 141402 (Sub-16F), filed July 17, 1978. Applicant: LINCOLN FREIGHT LINES, INC., Box 427, Lapel, IN 46015. Representative: Normal R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated paper cartons*, between Zanesville, OH, on the one hand, and, on the other, Lapel, IN, under contract with Brockway Glass Co., of Lapel, IN. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 141781 (Sub-8F), filed July 26, 1978. Applicant: LARSON TRANSFER & STORAGE CO., INC., 950 West 94th Street, Minneapolis, MN 55431. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Periodicals, from Minneapolis, MN, to Des Moines, IA, and Omaha, NE. (Hearing site: Minneapois or St. Paul, MN.)

NOTE.—Dual operations may be involved in this proceeding.

MC 143233 (Sub-3F), filed July 28, 1978. Applicant: DENNY TRANSPORT, INC., 3405 Industrial Parkway, Jeffersonville, IN 47130. Representative: C. Edward Glasscock, 1600 Citizens Plaza, Louisville, KY 40202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry milk products*, from the facilities of DMI, Inc., at or near Louisville, KY, to points in the United States (except KY, HI, and AK); and (2)(a) *soy flour and corn flour*, and (b) *milk powder* otherwise exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act when transported in mixed loads with soy flour and corn flour, from points in the United States (except AK, HI, and KY), to the facilities of DMI, Inc., at Louisville, KY, under a continuing contract in (1) and (2) (a) and (b) above with DMI, Inc., of Louisville, KY. (Hearing site: Louisville, KY, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 143849 (Sub-1F), filed August 14, 1978. Applicant: CLYNE SPARKS WRECKER SERVICE, INC., 3404 Cazassa, Memphis, TN 38116. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Disabled vehicles and trailers* (except trailers designed to be drawn by passenger vehicles), and (2) *replacement vehicles and trailers* (except trailers designed to be drawn by passenger vehicles), in (1) and (2) above, by use of wrecker equipment only, between points in Shelby County, TN, on the one hand, and, on the other, points in AL, AR, KY, LA, MS, MO, TN, and TX. (Hearing site: memphis, TN.)

MC 144013 (Sub-2F), filed August 1, 1978. Applicant: CARLEY'S BEST MOVERS, INC., 405 Douglas Street, Hammond, IN 46320. Representative: Michael F. Sheehan, Jr., 1 East Wacker Drive, Suite 2530, Chicago, IL 60601. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Lake, Porter, and LaPorte Counties, IN, restricted to the transportation of shipments having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such shipments, under a continuing contract with the Department of Defense, of Washington, D.C. (Hearing site: Chicago, IL.)

MC 144419 (Sub-1F), filed August 17, 1978. Applicant: MELBOURNE EAU GALLIE MOVING & STORAGE CO., INC., 1348 South Morningside Drive, Melbourne, FL 32901. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Brevard, Osceola, Orange, Indian River, Martin, Okeechobee, Palm Beach, Volusia, and St. Lucie Counties, FL, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic. (Hearing site: Jacksonville, FL.)

NOTE.—The person or persons who it appears may be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 144603 (Sub-5F), filed July 28, 1978. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, P.O. Box 1597, Maryland Heights, MO 63043. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used television tubes*, from points in the United States (except AK and HI), to Van Nuys, CA. Condition: The person or persons who it appears may be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Los Angeles, CA.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 144622 (Sub-8F), filed July 17, 1978. Applicant: GLENN BROS. MEAT CO., INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip Glenn (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials handling equipment, dock lift equipment, flat sheets, and casting steel*, (1) from Little Rock, AR, to points in the United States (except AK and HI and (2) from Chicago, IL, and Birmingham, AL, to Little Rock, AR. (Hearing site: Little Rock, AR, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 144724 (Sub-1F), filed July 13, 1978. Applicant: WALTER J. SHEETS & SON, INC., 100 Bittle Cove, Lewisburg, WV 24901. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Building blocks and brick*, from Roanoke, VA, to Lewisburg, WV; (2) *lumber*, from points in GA, NC, SC, and VA, to Lewisburg, WV; and (3) (a) *lumber, wood chips, and sawdust, and* (b) *bark* otherwise exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act when transported in mixed loads with lumber, wood chips, and sawdust, (a) between the facilities of J. P. Hamer Lumber Co., in WV, KY, and VA, and (b) from the facilities of J. P. Hamer, in WV, to points in GA, IL, IN, KY, NY, NC, OH, PA, SC, TN, VA, and WV, under a continuing contract in (1) and (2) above with S. J. Neathawk Lumber Inc., of Lewisburg, WV, and in (3) above with J. P. Hamer Lumber Co., of Kenova, WV. (Hearing site: Charleston, WV.)

MC 144779 (Sub-2F), filed August 1, 1978. Applicant: AHA, INC., Box 513, Panguitch, UT 84759. Representative: Nida Mae Jensen (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Precut cabinet parts* from Center, TX, to Cedar City, UT; (2) *forest products and lumber products,* from Panguitch, UT, to points in TX, and (3) *flat steel,* from Los Angeles and Pittsburg, CA, to Cedar City, UT. (Hearing site: Salt Lake City, UT.)

MC 144879 (Sub-1F), filed July 25, 1978. Applicant: D & J TRANSFER CO., a corporation, Sherburn, MN 56171. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by wholesale and retail farm, home, and hardware supply business houses (except foodstuffs and commodities in bulk), from those points in the United States in and east of ND, SD, NE, CO, OK, and TX, to Spencer, Spirit Lake, and Webster City, IA, restricted to the transportation of traffic originating at the indicated origins and destined to the facilities of Schmidt Distributors, Inc., doing business as Shopper's Supply, at or near Spencer, Spirit Lake, and Webster City, IA. (Hearing site: Sioux City, IA, or Omaha, NE.)

NOTE.—Dual operations may be involved in this proceeding.

MC 144933 (Sub-1F), filed July 28, 1978. Applicant: CONTRACT TRANSPORT CO., a corporation, 83 Progress Avenue, Springfield, MA 01101. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Malt beverages,* from Rochester and Fulton, NY, to Auburn, MA, under a continuing contract with Atlas Distributing Corp., of Auburn, MA. (Hearing site: Hartford, CT, or Boston, MA.)

MC 144989 (Sub-1F), filed August 16, 1978. Applicant: ANTHONY DREW SOSEBEE, d.b.a. BLUE RIDGE, MOUNTAIN CONTRACT CARRIER, P.O. Box 403, Dalton, GA 30720. Representative: S. H. Rich, Route 2, Box 68B, Blairsville, GA 30512. To operate as a *contract carrier* by motor vehicle, over irregular routes, transporting: (1) *Carpets, carpeting, rugs, and bedspreads,* between the facilities of Cavalier Carpets, Inc., at Dalton, GA, and the facilities of Lawtex Industries, Inc., at Calhoun and Dalton, GA, and Piedmont, AL, on the one hand, and, on the other, Phoenix, AZ, and points in CA, and (2) *materials* used in the manufacture of carpets, carpeting and rugs, from Phoenix, AZ, and points in CA,to the facilities of Cavalier Carpets, Inc., at Dalton, GA, and the facilities of Lawtex Industries, Inc., at Calhoun and Dalton, GA, and Piedmont, AL, under continuing contracts in (1) and (2) above, with Cavalier Carpets, Inc., and Lawtex Industries, Inc., both of Dalton, GA. (Hearing site: Dalton or Atlanta, GA.)

MC 145022 (Sub-2F), filed July 17, 1978. Applicant: MARSH BROS. TRUCKING SERVICE, INC., 1811 Howell Avenue., Dayton, OH 45407. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Coal,* from points in Clay, Kenton, Magoffin, Powell, and Wolfe Counties, Ky, to points in OH and IN. (Hearing site: Columbus, OH, or Washington, DC.)

MC 145068 (Sub-2F), filed July 26, 1978. Applicant: D.O.T. TRUCKING, INC., 104 West Marlin, Suite 320, McPherson, KS 67460. Representative: Clyde N. Christy, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Polyurethane form,* from Newton, KS, and Council Bluffs, IA, to points in CO, MO, OK, and TX, and (2) between Newton, KS, and Council Bluffs, IA, under a continuing contract with Future Foam, Inc., of Omaha, NE. (Hearing site: Kansas City, KS.)

MC 145113F, filed July 28, 1978. Applicant: PLANTATION FOODS, INC., 3130 Cholson Road, P.O. Box 887, Waco TX 76703. Representative: Gerry Prestridge, P.O. Box 1148, Austin, TX 78767. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Cotton and synthetic fiber piece goods,* from Opelika, AL, Augusta, Chickamauga, Rossville, and Trion, Ga, Elizabethton, TN, Lyman, Bishopville, Blacksburg, Graniteville, Orangeburg, Rockhill, and Spartanburg, SC, Concord and Kingston, NC, Newark, East Rutherford, Fairlawn, and Elizabeth, NJ, Rochester and College Point, NY, Putnam and Rockville, CT, and Fall River and Lawrence, MA, to Cleburne, TX, under a continuing contract with Walls Industries, Inc., of Cleburne, TX. (Hearing site: Dallas, TX.)

MC 145199 (Sub-1F), filed August 4, 1978. Applicant: WESTERFELD TRUCK LEASING, INC., Rural Route 10, Greensburg, IN 47240. Representative: Robert W. Loser, 1009 Chamber of Commerce Building, Indianapolis, IN 46294. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* in vehicles equipped with mechanical refrigeration, (1) between the facilities of KB Specialty Foods, at or near Greensburg, IN, on the one hand, and, on the other, Atlanta, GA, Charleston, WV, Little Rock, AR, Memphis and Nashville, TN, Salem and Roanoke, VA, Houston and Dallas, TX, Irwin and Pittsburgh, PA, and points in IL, KY, MI, MO, and OH, and (2) from the facilities of the Kroger Co., at Cincinnati, OH, to St. Louis, MO, Indianapolis, IN, Louisville, KY, and Detroit, MI, under a continuing contract with the Kroger Co., of Cincinnati, OH. (Hearing site: Indianapolis, IN, or Cincinnati, OH.)

MC 145203 (Sub-1F), filed August 14, 1978. Applicant: ONEY ENTERPRISES, INC., P.O. Box 2978, Milan, NM 87020. Representative: James E. Snead, P.O. Box 2228, Santa Fe, NM 87501. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Salt,* in bulk, in dump trucks, form Reid, NM, to Ambrosia Lake, NM, restricted to the transportation of traffic having a prior movement by rail in interstate commerce, under a continuing contract with Morton Salt Co., a Division of Morton-Norwich, of Chicago, IL. (Hearing site: Santa Fe or Albuquerque, NM.)

MC 145229F, filed August 14, 1978. Applicant: JAMES D. BASOLO and HAROLD W. FULLERTON, a partnership, d.b.a. J & H, P.O. Box 2670, Missoula, MT 59806. Representative: Walter Anno (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Malt beverages,* from Los Angeles and Van Nuys, CA, Vancouver, Tacoma, and Seattle, WA, and Milwaukee, WI, to points in MT; and (2) *malt beverage containers,* in the reverse direction. (Hearing site: Missoula or Billings, MT.)

NOTE.—The person or persons who it appears may be engaged in common control must either file an aplication under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

PASSENGER AUTHORITY

MC 144383 (Sub-2F), filed August 1, 1978. Applicant: LOWERY ASSOCIATES, INC., 722 Allendale Street, Baltimore, MD 21229. Representative: Junious Lowery, Jr. (same address as applicant). To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage,* between points in MD, VA, DE, PA, and DC, under a continuing contract with Consolidated Rail Corp., of Baltimore, MD. (Hearing site: Baltimore, MD, or Washington, DC.)

BROKER AUTHORITY

MC 130512F, filed July 7, 1978. Applicant: PERCIVAL TOURS, INC.,

Continental Bank Building, Fort Worth, TX 76102. Representative: Harold E. Mesirow, 1220 19th Street NW., Washington, DC 20036. To engage in operations, in interstate or foreign commerce, as a *broker*, at Forth Worth, TX, in arranging for the transportation by motor vehicle, of: *Passengers and their baggage*, in the same vehicle with passengers, in round trip special and charter operations, between points in the United States (including AK and HI, but excluding IL, IN, IA, KY, MI, MN, ID, NE, ND, OH, SD, and WI). (Hearing site: Forth Worth, TX, or Washington, DC.)

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in Tauck Tours, Inc., Extension, New York, NY, 54 MCC 291 (1954).

[FR Doc. 78-26196 Filed 9-18-78; 8:45 am]

[7035-01]

[Decisions Vol. No. 31]

DECISION-NOTICE

SEPTEMBER 11, 1978.

The following applications are governed by Special Rule 247 of the Commission's Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission on or before October 19, 1978. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is not a major Federal action significantly affecting the quality of the human environment.

It is ordered: In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones (Review Board Member Carleton not participating).

H. G. HOMME, Jr.,
Acting Secretary.

MC 4405 (Sub-580F), filed August 7, 1978. Applicant: DEALERS TRANSIT, INC., 522 South Boston, Tulsa, OK 74103. Representative: Alan Foss, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* the transportation of which, because of size or weight, requires the use of special equipment or handling, from the facilities of Rockcastle Steel Corp. in Rockcastle County, KY, to points in the United States (except AK and HI). (Hearing site: Louisville, KY.)

MC 4687 (Sub-20F), filed July 25, 1978. Applicant: BURGESS & COOK, INC., P.O. Bos 458 Fernandina Beach, FL 32304. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation and insulation materials*, (except commodities in bulk), from Leeds, AL, to points in FL and GA. (Hearing site: Jacksonville, FL, or Birmingham, AL.)

MC 9325 (Sub-76F), filed July 31, 1978. Applicant: K LINES, INC., 17765 Southwest Boones Ferry Road, Lake Oswego, OR 97034. Representative: John G. McLaughlin, Suite 1440, 200 Market Building, Portland, OR 97201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and fertilizer ingredients*, in bulk, in tank or hoppertype vehicles, from the ports of entry on the international boundary line between the United States and Canada in ID and those in WA on and east of U.S. Hwy 97 to points in OR, WA, and ID. (Hearing site: Spokane, WA.)

NOTE.—Applicant states that traffic is originating at points in the Province of BC, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its appropriate complementary Canadian authority or explaining why no such Canadian authority is necessary. The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from Points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 11207 (Sub-439F), filed July 25, 1978. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To op-

erate as a *common carrier,* by motor vehicle, irregular routes, transporting: *Iron and steel articles* (except commodities in bulk and those which because of size or weight require the use of special equipment), from the facilities of (a) Florida Wire & Cable Co., at Jacksonville, FL, and (b) Wire Mill, Inc., at Sanderson, FL, to points in AL, AR, GA, IL, IN, KY, LA, MO, MS, NC, OH, OK, SC, TN, TX, VA, and WV. (Hearing site: Jacksonville, FL, or Birmingham, AL.)

MC 30837 (Sub-485F), filed July 10, 1978. Applicant: KENOSHA AUTO TRANSPORT CORP. 4314 39th Avenue, Kenosha, WI 53142. Representative: Paul F. Sullivan, 711 Washington, DC 20005. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Automobiles, trucks, and buses,* as defined in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, in secondary movements, in truckaway service, from Earnest, PA, and points within 20 miles thereof, to points in CT, DE, MD, NJ, NY, PA, and DC, restricted to the transportation of traffic having a prior movement by rail or truck from the facilities of Jeep Corp., a subsidiary of American Motors Corp., at Toledo, OH, and South Bend, IN. (Hearing site: Washington, DC, or Detroit, MI.)

MC 35890 (Sub-50F), filed August 22, 1978. Applicant: BLODGETT FURNITURE SERVICE, INC., 5650 Foremost Drive SE., Grand Rapids, MI 49508. Representative: Ronald C. Nesmith, P.O. Box 4403, Chicago, IL 60680. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Expanded plastic and expanded plastic articles* from the facilities of E. I. du Pont de Nemours & Co., at or near Wurtland, KY, to points in CT, DE, IL, MD, MA, MI, NJ, NY, PA, RI, and WI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 42487 (Sub-876F), filed July 13, 1978. Applicant: CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97028. To operate as a *common carrier,* by motor vehicle, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Dallas, TX, and Birmingham, AL, over Interstate Hwy 20, serving no intermediate points, as an alternate route for operating convenience only in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Washington, DC.)

MC 55896 (Sub-83F), filed July 12, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty (same address as applicant). To operate as a *common carrier,* by motor vehicle, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Edgerton, WI, as an off-route point in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Detroit, MI.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 55896 (Sub-85F), filed July 12, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Automobile body parts and iron and steel articles,* between Marion, IN, and Hamilton, OH. (Hearing site: Indianapolis, IN.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 57239 (Sub-34F), filed August 3, 1978. Applicant: RENNER'S EXPRESS, INC., 1350 South West Street, Indianapolis, IN 46206. Representative: Roland Rice, 501 Perpetual Building, 1111 E Street NW., Washington, DC 20004. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Household appliances,* and (2) *parts and accessories* for household appliances, from Louisville, KY, to those points in MI on and south of MI Hwy 21, restricted to the transportation of shipments originating at the named origin. (Hearing site: Louisville, KY, or Indianapolis, IN.)

MC 57275 (Sub-15F), filed June 20, 1978. Applicant: SCHADE REFRIGERATED LINES, INC., P.O. Box 14407, Phoenix, AZ 85063. Representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Photographic equipment and materials,* in vehicles equipped with mechanical refrigeration, between points in AZ. (Hearing site: Phoenix, AZ.)

MC 58152 (Sub-24F), filed July 13, 1978. Applicant: OGDEN & MOFFETT CO., a corporation, 1515 Busha Highway, Marysville, MI 48034. Representative: Walter N. Bieneman, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. To operate as a *common carrier,* by motor vehicle, transporting *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Kalamazoo and Detroit, MI, over Interstate Hwy 94, serving no intermediate points, as an alternate route for operating convenience only in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Washington, DC.)

MC 60014 (Sub-86F), filed July 14, 1978. Applicant: AERO TRUCKING, INC., an Ohio corporation, Box 303, Monroeville, PA 15146. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Plasterboard joint systems;* and (2) *materials and supplies* used in the installation and distribution of the commodities in (1) above, from Milford, VA, to points in ME, NH, VT, MA, and RI. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 61592 (Sub-423F), filed July 21, 1978. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting (1) *Composition board,* from Coldwater, MI, to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of composition board (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL.)

MC 63417 (Sub-159F), filed July 25, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). To operate as a *common carrier,* by motor vehicle over irregular routes, transporting: *Synthetic fiber and synthetic yarn,* between Chattanooga, Nashville, and Old Hickory, TN, and Seaford, DE, on the one hand, and, on the other, points in VA. (Hearing site: Roanoke, VA, or Washington, DC.)

MC 63417 (Sub-160F), filed July 26, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting *microfoam*

and microfoam articles, from Wurtland, KY, to points in DE, GA, MD, NJ, NY, OH, PA, WV, and DC. (Hearing site: Roanoke, VA, or Washington, DC.)

MC 85788 (Sub-11F), filed August 18, 1978. Applicant: JACOBSEN TRANSFER, INC., P.O. Box 47, Fairmont, NE 68354. Representative: Thomas B. Sehon, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts, and articles distributed by meat packinghouses,* as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates; 61 MCC 209 and 766 (except hides and commodities in bulk), (1) from the facilities of Sunflower Beef Packers, Inc., at or near York, NE, to points in CO, IN, KY, OH, and SD; and (2) from Lexington, NE, to points in CO, IN, IA, MN, SD, and those in MO south of U.S. Hwy 50. (Hearing site: Omaha, NE.)

NOTE.—DUAL OPERATIONS ARE INVOLVED IN THIS PROCEEDING.

MC 995540 (Sub-1030F), filed August 14, 1978. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk): (1) from the facilities of Crackin' Good Bakers, Inc., at or near Valdosta, GA, to Ft. Worth, TX, and points in FL, KY, AL, and LA, and (2) from the facilities of Deep South Products, Inc., at or near Gainesville, GA, to Ft. Worth, TX, Jacksonville, Miami, Orlando, Pompano, and Tampa, FL, Louisville, KY, and New Orleans, LA. (Hearing site: Jacksonville, FL, or Washington, DC.)

MC 98952 (Sub-54F), filed July 7, 1978. Applicant: GENERAL TRANSFER CO., a Delaware corporation, 2880 North Woodford Street, Decatur, IL 62526. Representative: Paul E. Steinhour, 918 East Capitol Avenue, Springfield, IL 62701. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are dealt in by food and drug business houses; and (2) *equipment, materials, and supplies* used in the conduct of such businesses (except commodities in bulk), from Chicago, IL, to points in IN, KY, MI, MO, OH, and WI, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations (Hearing site: Springfield or Chicago, IL.)

MC 102150 (Sub-13F), filed August 21, 1978. Applicant: JENSEN TRANSPORT, INC., P.O. Box 368, Albert Lea, MN 56007. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials,* in bulk, from the facilities of Land O'Lakes, Agricultural Service Division, at or near Mason City, IA, to points in MN, WI, ND, SD, and NE. (Hearing site: Minneapolis, MN, or Des Moines, IA.)

MC 105566 (Sub-172F), filed July 10, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Heating and air-conditioning equipment, parts, and accessories* (except commodities which because of size or weight require the use of special equipment), from Nashville, TN, to points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY. (Hearing site: Nashville, TN.)

MC 105566 (Sub-173F), filed July 10, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals* in containers, between the facilities of Air Products & Chemicals, Inc., at or near City of Industry and Los Angeles, CA, Pace and Tampa, FL, Atlanta, GA, Chicago, IL, Calvert City, KY, San Gabriel, LA, Elkton, MD, Finderne, Middlesex, Paulsboro, and South Brunswick, NJ, Cleveland, OH, Portland, OR, and Pasadena, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 106647 (Sub-43F), filed July 27, 1978. Applicant: CLARK TRANSPORT CO., INC., Rural Route 1, Box 14C, Junction Routes 83 and 30, Chicago Heights, IL 60411. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Motor vehicles,* in initial movements, in truckaway service, from Chicago, IL, to points in DE, MD, VA, and DC. (Hearing site: Chicago, IL, or Detroit, MI.)

MC 107012 (Sub-272F), filed July 12, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gary M. Crist (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Kitchen cabinets,* from the facilities of International Paper Co., at or near Kansas City, KS, to points in AL, AR, CO, MO, NE, OK, TN, and TX. (Hearing site: Kansas City, KS, or Washington, DC.)

MC 107012 (Sub-276F), filed July 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Glass fiber reinforced plastic articles,* and (2) *accessories* for glass fiber reinforced plastic articles, from the facilities of Owens-Corning Fiberglas, at or near Huntsville, AL, to points in AZ, AR, CA, CO, ID, IA, KS, LA, MN, MT, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY. (Hearing sites: Toledo, OH, or Washington, DC.)

MC 108119 (Sub-94F), filed August 17, 1978. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier,* over irregular routes, transporting: (1) *Industrial oil and gas burners, rotary blowers, air heaters,* and (2) *parts and controls* for the commodities in above, between the facilities of Coen Co., in Alameda, San Mateo, and Santa Clara Counties, CA, on the one hand, and, on the other, points in the United States (including AK, but excluding HI). (Hearing site: San Francisco or Los Angeles, CA.)

MC 109692 (Sub-64F), filed July 12, 1978. Applicant: GRAIN BELT TRANSPORTATION CO., a corporation, Route 13, Kansas City, MO 64161. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64161. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Solar energy heating and cooling systems,* (2) *woodburning heating appliances,* and (3) *parts, materials, supplies, and accessories* used in the manufacture, distribution, installation, and operation of the commodities in (1) and (2) above, between the facilities of Valmont Industries, Inc., at or near Valley, NE, on the one hand, and, on the other, points in AZ, AR, CO, IL, IN, IA, KS, LA, MI, MN, MO, NE, NM, ND, OH, OK, SD, TX, and WI. (Hearing site: Omaha, NE, or Kansas City, MO.)

MC 111231 (Sub-236F), filed July 24, 1978. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: John C. Everett, P.O. Box A, 140 East Buchanan, Prairie Grove, AR 72753. To operate as a *common carrier,* by

motor vehicle, over irregular routes, transporting: *Iron and steel articles,* between St. Louis, MO, on the one hand, and, on the other, points in OK. (Hearing site: St. Louis, MO, or Chicago, IL.)

NOTE.—Tacking is authorized at St. Louis, MO, with carrier's authority in MC 111231 (Sub-41), issued January 28, 1960, to provide a through service transporting steel and steel products from points in MO.

MC 111981 (Sub-26F), filed July 26, 1978. Applicant: ROBIDEAU'S EXPRESS, INC., Front Street and Oregon Avenue, Philadephia, PA 19148. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), between the facilities of Campbell's Soup Co., Inc., W. L. Wheatley, Inc., and Pepperidge Farms, Inc., in DE, MD, NJ, and PA, on the one hand, and, on the other, points in CT, VA, DE, MD, NJ, NY, PA, and DC. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 114045 (Sub-507F), filed August 7, 1978. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same address as above). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals, chemical coatings, and adhesives* (except in bulk), in vehicles equiped with mechanical refrigeration, from Euless, TX, to points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Dallas, TX.)

MC 114312 (Sub-32F), filed July 20, 1978. Applicant: ABBOTT TRUCKING, INC., Route 3, Delta, OH 43515. Representative: David A. Turano, Suite 1800, 100 East Broad, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fertilizer,* from Lancaster, PA, to points in OH, IN, IL, MI, and WI. (Hearing site: Columbus, OH, or Washington, DC.)

MC 114552 (Sub-172F), filed July 17, 1978. Applicant: SENN TRUCKING CO., a corporation, P.O. Drawer 220, Newberry, SC 29108. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Aluminum and steel tanks;* (2) *parts* for aluminum and steel tanks; and (3) *materials, equipment, and supplies* used in the installation of aluminum and steel tanks (except commodities in bulk), from the facilities of Pittsburgh-Des Moines Steel Co., at or near Birmingham, AL, to points in FL, GA, KY, LA, MS, NC, SC, and TN, restricted to the transportation of traffic originating at the named origin. (Hearing site: Birmingham, AL.)

MC 115826 (Sub-330F), filed July 10, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, Denver, CO 80217. Representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in and used by manufacturers and distributors of alcoholic beverages (except commodities in bulk, in tank vehicles), between the facilities of Heublein, Inc., at or near Paducah, KY, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New York, NY, or Washington, DC.)

MC 115826 (Sub-331F), filed July 13, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, Denver, CO 80217. Representative: Howard Gore (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses,* as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Limon Packing Co., at or near Limon, CO, to points in the United States (except AK and HI). (Hearing site: Denver, CO.)

MC 115904 (Sub-105F), filed June 21, 1978. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1)(a) *Aluminum and aluminum products* (except commodities in bulk), and (b) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), between the facilities of Alumax, Inc., Alumax Mill Products, Inc., Alumax Fabricated Products, Inc., Kawneer Co., Inc., Decater Aluminum Co., Inc., Alumax Pacific Corp., Alumax Irrigation Products, Inc., South Bend Screw Products, Inc., Berrien Tool and Die Co., Lebanon Industries, Alumax Foils, Inc., Alumax Extrusions, Inc., Apex International Alloys, Inc., Hillyard Aluminum Recovery Co., Intalco Aluminum Corp., and Eastalco Aluminum Co., at or near Casa Grande, AZ, Long Beach, Romoland, Santa Fe Springs, Riverside, Visalia, and Woodland, CA, Loveland, CO, Boise and Twin Falls, ID, Chicago, Morris, and St. Charles, IL, Franklin, Bicknell, and Bristol, IN, McPherson, KS, Montevideo, MN, St. Louis, MO, Hernando, MS, Cleveland, OH, Tulsa and Checotah, OK, Stayton and Umatilla, OR, Denison and Mansfield, TX, Spokane and Ferndale, WA, and Marshfield, WI, on the one hand, and, on the other, those points in the United States in and west of OH, IN, IL, MO, AR, and MS (except AK and HI); and (2) *zinc and zinc alloys* (except in bulk), between the facilities of Alumax, Inc., Alumax Mill Products, Inc., Alumax Fabricated Products, Inc., Kawneer Co., Inc., Decater Aluminum Co., Inc., Alumax Pacific Corp., Alumax Irrigation Products, Inc., South Bend Screw Products, Inc., Berrien Tool and Die Co., Lebanon Industries, Alumax Foils, Inc., Alumax Extrusions, Inc., Apex International Alloys, Inc., Hillyard Aluminum Recovery Co., Intalco Aluminum Corp., and Eastalco Aluminum Co., at or near Long Beach, CA, Chicago, IL, Cleveland, OH, and Checotah, OK, on the one hand, and, on the other, those points in the United States in and west of OH, IL, IN, MO, AR, and MS (except AK and HI). (Hearing site: Washington, DC, or Los Angeles, CA.)

MC 116254 (Sub-21F), filed July 13, 1978. Applicant: CHEM—HAULERS, INC., P.O. Box 339, Florence, AL 35630. Representative: Randy C. Luffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cleaning compounds,* in bulk, in tank vehicles, from Montgomery, AL, to Oklahoma City, OK. (Hearing site: Montgomery, AL, or Atlanta, GA.)

MC 117068 (Sub-100F), filed August 18, 1978. Applicant: MIDWEST SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418, Rochester, MN 55901. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber and composition board,* from Arden, WA, to points in IN and IL, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Seattle, WA.)

MC 117730 (Sub-23F), filed August 17, 1978. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Silica sand,* from Mt. Horeb, WI, to points in IL, IN, and WI; and (2) *filter aggregates,* from Muscatine, IA, Eau Claire, WI, and Pottsville, PA, to points in IL, IN, and WI. (Hearing site: Chicago, IL.)

MC 117786 (Sub-23F), filed July 12, 1978. Applicant: RILEY WHITTLE,

INC., P.O. Box 19038, Phoenix, AZ 85009. Representative: Thomas F. Kilroy, Suite 406 Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Alcoholic beverages* (except in bulk, in tank vehicles), from Lawrenceburg, IN, Bardstown, Claremont, Frankfort, Lawrenceburg, Louisville, and Owensboro, KY, Baltimore and Relay, MD, Detroit, MI, St. Louis, MO, Edison, NJ, Cincinnati, OH, and Lynchburg, TN, to points in AZ, CA, CO, and NV. (Hearing site: Chicago, IL.)

MC 117786 (Sub-24F), filed July 12, 1978. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoeniz AZ 85009. Representative: Thomas F. Kilroy, Suite 406 Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Drugs,* from Cincinnati, OH, to Los Angeles, CA, Dallas, TX, Atlanta, GA, and Chicago, IL. (Hearing site: Cincinnati, OH.)

MC 117815 (Sub-293F), filed August 7,, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, IA 50317. Representative: Dewey Marselle, 405 Southeast 20th Street, Des Moines, IA 50317. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except bulk), from the facilities of Campbell Soup Co., at or near Napoleon, OH, to points in IL, IA, KS, MN, MO, NE, and WI, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL, or Detroit, MI.)

MC 118806 (Sub-63F), filed July 3, 1978. Applicant: ARNOLD BROS. TRANSPORT, LTD., 851 Lagimodiere Boulevard, Suite 200, Winnepeg, MB, Canada R25 3K4. Representative: Bernard J. Kompare, Suite 1600, 10 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by agricultural equipment and lawn and leisure products dealers (except commodities in bulk), between the ports of entry on the international boundary line between the United States and Canada in MI and NY, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic (a) moving in foreign commerce, and (b) originating at or destined to the facilities of White Farm Equipment, a division of White Motor Co. of Canada Ltd., in the Provinces of ON, PQ, NB, NS, NF, and PE, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary.

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect. (Hearing site: Chicago, IL.)

MC 119789 (Sub-488F), filed July 3, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: Lewis Coffey (same address as applicant), To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Snow removal equipment* and *cleaning compounds,* from Girard, PA, to points in the United States (except AK and HI). (Hearing site: Pittsburgh, PA.)

MC 119988 (Sub-155F), filed August 18, 1978. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail, department, and variety stores (except commodities in bulk), from points in AL, AR, CA, CT, FL, IL, IN, IA, KY, LA, ME, MD, MA, MI, MO, MS, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WA, WV, and WI, to the facilities of Value Mart, Inc., at or near Hattiesburg, MS, and Atlanta, GA. (Hearing site: Jackson, MS, or Washington, DC.)

MC 121496 (Sub-12F), filed July 12, 1978. Applicant: CANGO CORP., Suite 2900, 1100 Milan Building, Houston, TX 77002. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid chemicals* (except bromine), in bulk, in tank vehicles, from the facilities of Dow Chemical USA, in Columbia County, AR, to points in IL, KY, KS, LA, MO, MS, OK, TN, and TX. (Hearing site: Houston, TX.)

MC 123778 (Sub-39F), filed August 18, 1978. Applicant: JALT CORP., d.b.a. UNITED NEWSPAPER DELIVERY SERVICE, P.O. Box 398, Woodbridge, NJ 07095. Representative: Morton E. Kiel, Fifth World Trade Center, Suite 6193, New York, NY 10048. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Magazines,* from Edison, NJ, to Wilmington, DE, and points in CT, NJ, those in NY on and east of NY Hwy 14, those in MD and PA on and east of U.S. Hwy 15, and DC under a continuing contract with R. R. Donnelly, Inc., of Chicago, IL. (Hearing site: New York, NY.)

MC 124896 (Sub-62F), filed July 12, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., P.O. Box 3485, Wilson, NC 27893. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Basket, hampers, and covers* for baskets and hampers, from points in Northampton and Hertford Counties, NC, to points in FL, GA, SC, and TN. (Hearing site: Washington, DC.)

MC 127042 (Sub-223F), filed July 17, 1978. Applicant: HAGEN, INC., P.O. Box 98, Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat packinghouses,* as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from Buffalo Lake, MN, to points in CA, OR, and WA. (Hearing site: Minneapolis, MN.)

MC 128746 (Sub-41F), filed July 13, 1978. Applicant: D'AGATA NATIONAL TRUCKING CO., a corporation, 3240 South 61st Street, Philadelphia, PA 19153. Representative: Edward J. Kiley, Suite 501, 1730 M Street NW., Washington, DC 20036. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers,* from the facilities of Midland Glass Co., Inc., at or near Cliffwood, NJ, to the facilities of Midland Glass Co., Inc., in Onondaga and Oswego Counties, NY, restricted to the transportation of traffic destined to the indicated destinations. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 129455 (Sub-32F), filed August 7, 1978. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, 1815 Front Street,

Scotch Plains, NJ 07076. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals* (except in bulk), from the facilities of Amoco Chemcial Corp., at or near (1)(a) Willow Springs, Joliet, and Wood River, IL, and (b) Texas City and Chocolate Bayou, TX, to points in CA, WA, OR, VA, MD, DE, PA, NJ, NY, CT, RI, MA, VT, NH, ME, and DC, (2) Chocolate Bayou and Texas City, TX, to points in IN, IL, and WI, and (3) New Castle, DE, to points in IL, IN, TX, and CA, under a continuing contract with Amoco Chemical Corp., of Chicago, IL. (Hearing site: New York, NY.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 129701 (Sub-7F), filed July 31, 1978. Applicant: JASPER FURNITURE FORWARDING, INC., P.O. Box 146, Huntingburg, IN 47542. Representative: Orville G. Lynch, P.O. Box 364, Westfield, IN 46074. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Evansville and Indianapolis, IN, Louisville, Owensboro, and Princeton, KY, Cincinnati, OH, Chicago, IL, and the facilities of Soundesign Corp., at or near Santa Claus, IN, restricted to the transportation of traffic having a prior or subsequent movement by rail. (Hearing site: Indianapolis, IN.)

MC 134477 (Sub-257F), filed July 14, 1978. Applicant: SCHANNO TRANSPORTATION, INC., Five West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of John Morrell & Co., at St. Paul, MN, to points in GA, KY, NC, SC, and TN, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Minneapolis, MN.)

MC 135070 (Sub-10F), filed August 22, 1978. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal cabinets and parts and accessories for metal cabinets*, from the facilities of General Metalcraft Co., at or near Dover, DE, to Bentonville, AR, Wichita, KS, Denver, CO, El Paso, TX, and Phoenix, AZ. (Hearing site: Wichita, KS, or Amarillo, TX.)

MC 136161 (Sub-15F), filed July 28, 1978. Applicant: ORBIT TRANSPORT, INC., P.O. Box 163, Spring Valley, IL 61362. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mill supplies, windows, sashes, and doors*, and (2) *materials* used in the manufacture and installation of the commodities named in (1) above, between Oglesby, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 136605 (Sub-57F), filed May 23, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: W. E. Seliski (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel buildings, and materials and equipment* used in the manufacture, erection, and distribution of steel buildings, from the facilities of Miracle Span Steel Buildings, Inc., at or near Watertown, SD, and Fort Madison, IA, to points in MT, ID, UT, and NV. (Hearing site: Billings, MT.)

MC 136605 (Sub-65F), filed July 24, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Prefabricated steel buildings*, and (2) *parts, components, and accessories* for prefabricated steel buildings, from the facilities of Star Manufacturing Co., at or near Oklahoma City, OK, to points in WA, OR, ID, and MT. Condition: Prior receipt from applicant of an affadavit setting forth its appropriate complementary Canadian authority or explaning why no such Canadian authority is necessary. (Hearing site: Seattle, WA, or Billings, MT.)

NOTE.—Applicant states that shipments to the ports of entry on the international boundary line between the United States Canada at points in MT, ID, and WA are destined to points in the Provinces of AB and BC, Canada. The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Application for Operating Authority to Handle Traffic to and from Points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition of restriction was imposed, as being null and void and having no force or effect.

MC 136605 (Sub-67F), filed August 7, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel, aluminum, and nickel tanks*, knockeddown, (2) *used construction equipment* used in the installation of the commodities in (1) above, and (3) *fuel distribution tanks*, from the facilities of Brown Minneapolis Tank Co., at or near St. Paul, MN, to those points in the United States in and west of ND, SD, NE, KS, OK, and TX (except AK and HI). (Hearing site: Minneapolis, MN, or Billings, MT.)

MC 136381 (Sub-3F), filed July 24, 1978. Applicant: GARRITY TRUCKING, INC., 110 Main Street, Fortville, IN 46040. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Powdered glass*, from Cleveland, OH, and Jackson, MS, (2) *silica sand*, from Wedron, IL, (3) *abrasive materials*, from Niagara Falls, NY, and Westfield and North Grafton, MA, (4) *cleaning compounds*, from Alsip, IL, to the facilities of Indiana Machinery & Supply, Inc., at or near Fortville, IN, under a continuing contract with Indiana Machinery & Supply, Inc., of Fortville, IN. (Hearing site: Indianapolis, IN.)

MC 138304 (Sub-14F), filed July 14, 1978. Applicant: NATIONAL PACKERS EXPRESS, INC., an Illinois corporation 3445 Patterson Plank Road, North Bergen, NJ 07047. Representative: Craig B. Sherman, Barnett Bank Building, 1103 Kane Concourse, Bay Harbor Islands, FL 33154. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt* and *salt products*, from St. Clair, MI, and Akron, OH, to points in PA, NY, MD, DE, NJ, CT, MA, RI, and DC. (Hearing site: New York, NY, or Washington, DC.)

MC 136404 (Sub-11F), filed July 14, 1978. Applicant: DALE FOWLER AND MERLE THRAPP, a partnership, d.b.a. D & M TRANSPORT, Box 38, Sprague ville, IA 52074. Representative: Dale Fowler (same address as applicant.) To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cattle hides, and meat scraps* (except in bulk), from Ma-

quoketa, IA, to points in IA, IL, IN, KY, MI, MN, MO, ME, MA, NH, SC, NC, FL, VT, DE, OH, PA, WV, WI, NY, TN, and VA. (Hearing site: Washington, DC.)

MC 139906 (Sub-14F), filed July 13, 1978. Applicant: INTERSTATE CONTRACT CARRIER CORP., 2156 W. 2200 So., P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Compressed gas cylinders, and ammunition* (except explosives), from the facilities of Norris Industries, at or near Los Angeles, CA, to those points in the United States in and east of ND, SD, WY, UT, and NM. (Hearing site: Lincoln, NE, or Salt Lake City, UT.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 140612 (Sub-48F), filed July 17, 1978. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, IA 52406. Representative: J. L. Kazimour (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs,* between Plover, WI, on the one hand, and, on the other, points in IA, IL, IN, MO, AR, MN, KY, TN, OH, LA, MI, NE, TX, AZ, and CA, restricted to the transportation of traffic originating at or destined to the facilities of Termicold Corp., at or near Plover, WI. (Hearing site: Madison, WI.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 140820 (Sub-8F), filed August 18, 1978. Applicant: A & R TRANSPORT, INC., 2996 North Illinois 17, Rural Route No. 3, Ottawa, IL 61350. Representative: James R. Madler, 120 West Madison Street, Suite 718, Chicago, IL 60602. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Sand,* in bulk, from points in LaSalle County, IL, to Lawerenceburg, IN. (Hearing site: Chicago, IL.)

MC 141804 (Sub-118F), filed July 13, 1978. Applicant: WESTERN EXPRESS, Division, of Interstate Rental Inc., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Computer paper, printed forms,* and (2) *materials and equipment* used in the manufacture of the commodities in (1) above, between points in Orange, Los Angeles, and San Diego Counties, CA, on the one hand, and, on the other, Tulsa, OK, Dallas and Houston, TX, and those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Los Angeles or San Francisco, CA.)

MC 142559 (Sub-34F), filed August 16, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Personal care products, chewing gum, cough drops, and candies,* (1) from Milford and Orange, CT, Rockford and Chicago, IL, Boston, MA, New York, NY, and Lititz and Philadelphia, PA, to Atlanta, GA, and (2) from Milford and Orange, CT, Boston, MA, New York, NY and Lititz and Philadelphia, PA, to Chicago, IL. (Hearing site: New York, NY.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 142559 (Sub-36F), filed August 21, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Furnaces and central air conditioning units,* and (2) *materials, equipment and supplies* used in the installation and operation of the commodities in (1) above (except commodities in bulk), from Utica, NY, to points in the United States (except AK, CT, HI, ME, MA, NH, NY, RI, and VT). (Hearing site: Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 143059 (Sub-20F), filed August 17, 1978. Applicant: MERCER TRANSPORTATION CO., a Texas corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Clayte Binion, 1108 Continental Building, Ft. Worth, TX 76102. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Pipe,* from Wagoner, OK, St. Louis, MO, and Bellevue, OH, to points in the United States (except AK and HI), and (2) *materials and supplies* used in the manufacture of pipe, in the reverse direction. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 143059 (Sub-21F), filed August 17, 1978. Applicant: MERCER TRANSPORTATION CO., a Texas corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Clayte Binion, 1108 Continental Life Building, Ft. Worth, TX 76102. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Pipe, valves, pipe fittings,* and *fire hydrants,* between Birmingham and Decatur, AL, Louisville, KY, and Kenner, LA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Birmingham, AL, or Washington, DC.)

MC 144041 (Sub-17F), filed July 28, 1978. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle NE., Atlanta, GA 30345. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic pipe* and *pipe fittings,* from Social Circle, GA, to points in IL, WI, MI, IN, WV, DE, PA, NY, NJ, CT, RI, MA, ME, VT, NH, and DC. (Hearing site: Atlanta, GA, or Washington, DC.)

NOTE.—Dual operations may be involved in this proceeding.

MC 144380 (Sub-2F), filed August 16, 1978. Applicant: ROBERT J. RATHWAY and WILLIAM C. PAULL, JR., a partnership, d.b.a. B&B EQUIPMENT CO., R.D. No. 2, Box 169A, Perryopolis, PA 15473. Representative: John A. Pillar, 205 Ross Street, Pittsburgh, PA 15219. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Coal,* from points in Fayette, Greene, Washington, and Westmoreland Counties, PA, and Monongalia County, WV, to points in OH and WV under continuing contracts with Gallatin Fuels, Inc., Mon West, Inc., and Utility Fuels, Inc., all of Uniontown, PA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 144386 (Sub-2F), filed July 14, 1978. Applicant: WILLIAM B. BLANEY, JOHN D. BLANEY, JR., and JAMES M. BLANEY, d.b.a. BLANEY FARMS, R.D. No. 1, Box 218B, Perryopolis, PA 15473. Representative: Robert D. Kalinoski, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Salt and salt products* (except in bulk), from the facilities of Diamond Crystal Salt Co., Inc., at or near Akron, OH, to points in MD, PA, and WV. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 144622 (Sub-6F), filed July 14, 1978. Applicant: GLENN BROS. MEAT CO., INC., P.O. Box 9343, Little Rock, AR 72209. Representative: Phillip Glenn (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Charcoal briquettes, hickory chips, and fireplace logs* (1) from Cotter, AR, to points in MS, LA, AL, OK, KS, NE, CO, IL, IA, MN, SD, ND, AZ, NM, and CA, and (2) from Burnside, KY, to points in IN, IL, OH, MI, and WI. (Hearing site: Louisville, KY, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 144622 (Sub-7F), filed July 14, 1978. Applicant: GLENN BROS. MEAT CO., INC., P.O. Box 9343, Little Rock, AR 72209. Representative: Phillip Glenn (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Industrial chemicals*, from Decatur, IN, Newark and Piscataway, NJ, Panama City, FL, Philadelphia, PA, St. Louis, MO, Everett, MA, Syracuse, NY, and Lake Charles and Donaldsonville, LA, to Berkeley and Los Angeles, CA. (Hearing site: Los Angeles, CA, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 144661 (Sub-2F), filed July 11, 1978. Applicant: F. A. MILLER, INC., P.O. Box 401, Rexburg, ID 83440. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill products, and particleboard*, from points in OR, WA, those in ID in and north of Idaho County, and those in MT in and west of Glacier, Pondera, Teton, Lewis and Clark, Jefferson, and Madison Counties, to points in CO, UT, and WY. (Hearing site: Boise or Idaho Falls, ID.)

NOTE.—The person or persons who appear to be engaged in common control must either file and application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 144809 (Sub-3F), filed August 16, 1978. Applicant: POSEY TRUCK LINES, INC, Route 2, Box 219, Taft, TN 38488. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Equipment and materials* used in the manufacture of appliances and heating and air conditioning units, between the facilities of Amana Refrigeration, Inc., at or near Fayetteville, TN, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, IA, KY, MI, OH, MO, and TN, and (2) *appliances* and *heating and air conditioning units*, between the facilities of Amana Refrigeration, Inc., at or near Fayetteville, TN, on the one hand, and, on the other, points in AR, IL, IN, IA, KY, MI, MO, and OH, under a continuing contract in (1) and (2) above, with Amana Refrigeration, Inc., of Amana, OH. (Hearing site: Nashville, TN.)

MC 144899 (Sub-1F), filed August 21, 1978. Applicant: EAST COAST HOT SHOT SERVICE, INC., Davisville Road, North Kingstown, RI 02854. Representative: Robert L. Cope, Suite 501, 1730 M Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials*, and *supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, and (2) *machinery, materials, equipment* and *supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, between North Kingstown, RI, on the one hand, and, on the other, points in AR, CT, DE, GA, IL, IN, LA, MD, MA, MI, MS, NC, NJ, NY, OH, OK, PA, RI, SC, TX, VA, and WV. (Hearing site: Providence, RI, or Washington, DC.)

MC 144976F, filed June 29, 1978. Applicant: CARDINAL CARRIER CORP., 300 Third Ave., New York, NY 10017. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Record album covers, sleeves, and labels*, and (2) *materials and equipment* used in the manufacture and sale of the commodities named in (1) above, (a) between Great Neck, NY, on the one hand, and, on the other, Richmond, Indianapolis, Lawrence, and Terre Haute, IN, Nashville, TN, Jacksonville, Pinckneyville and Morton Grove, IL, Paterson, Ancora, Cranford, Mountainside, Somerdale and Lakewood, NJ, Dayton, OH, Philadelphia and Olyphant, PA, Winchester, VA, Elizabeth, Ky, and Concord, NH, and (b) between Terre Haute, IN, on the one hand, and on the other, Nashville, TN, Jacksonville, Pinckneyville and Morton Grove, IL, Philadelphia and Olyphant, PA, Winchester, VA, Gloversville, NY, and Brookfield, WI, points in NJ, and Nassau and Suffolk Counties, NY, under a continuing contract with Ivy Hill Communications, Inc., of Great Neck, NY. (Hearing site: New York, NY, or Washington, DC.)

MC 145082F, filed July 17, 1978. Applicant: JANNEY INDUSTRIES, INC., 1119 Beaver Street, Bristol, PA 19007. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lighting fixtures*, from the facilities of Keystone Lighting Corp., at or near Bristol, PA, to points in the United States (except AK, HI, and PA); and (2) *materials and supplies* used in the manufacture distribution of lighting fixtures, in the reverse direction, under a continuing contract with Keystone Lighting Corp., of Bristol, PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 145087F, filed July 13, 1978. Applicant: REY L. VALTIER, d.b.a. R. L. V. TRUCKING, 433 Fraser Avenue, Los Angeles, CA 90022. Representative: Rey L. Valtier (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scaffolding equipment*, between points in AZ, CA, CO, ID, KS, MT, NE, ND, NM, NV, OK, OR, SD, TX, UT, WA, and WY, under a continuing contract with Kwikform America, Inc., of Irvine, CA. (Hearing site: Los Angeles, CA.)

MC 145091F, filed July 26, 1978. Applicant: YOUNG CONTRACT CARRIER, INC., P.O. Box 954, 8693 South 109 Road, Alamosa, CO 81101. Representative: Richard P. Kissinger, Steele Park, Suite 330, 50 South Steele Street, Denver, CO 80209. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber*, (a) from points in CO to points in KS, OK, TX, and NM, (b) from points in NM, to points in CO, KS, OK, and TX, and (c) from points in WY, to points in CO, KS, OK, TX, and NM; (2) *wood pallets*, from points in Alamosa County, CO, to points in Bernalillo County, NM; (3) *building materials*, (a) from points in Lincoln, Carter, and Caddo Counties, OK, to points in CO, and (b) from points in Bernalillo County, NM, to points in CO; and (4) *reinforcing bars*, from the facilities of Border Steel Rolling Mills at or near El Paso, TX, to points in CO, under a continuing contract with Young Wholesale Lumber & Supply, Inc., of Alamosa, Co. (Hearing site: Denver, CO.)

MC 145111F, filed July 27, 1978. Applicant: HASTINGS TRUCKING, INC., 907 Holland, Galena Park, TX 77547. Representative: Dan Felts, P.O. Box 2207, Austin, TX 78768. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand and gravel*, in bulk, in dump vehicles, between points in TX, on the one hand, and, on the other, points in LA. (Hearing site: Houston, TX, or New Orleans, LA.)

MC 145121F, filed July 26, 1978. Applicant: FULMER BROTHERS INTERNATIONAL, INC., 5325 South Orange Blossom Trail, Orlando, FL 32809. Representative: Harry S. Dent, P.O. Box 528, Columbia, SC 29202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Preserved foodstuffs*, between the facilities of Duffy-Mott Co., Inc., at or near Williamson, Hamlin, and Holley, NY, and Aspers and Hanover, PA, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, OK, SC, TN, and TX, under a continuing contract with Duffy-Mott

Co., Inc., of New York, NY. (Hearing site: Jacksonville, FL, or Atlanta, GA.)

MC 145238F, filed August 21 1978. Applicant: CHAPMAN TRUCKING, INC., 2346 South Lynhurst, Indianapolis, IN 46241. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Coal,* between points in IL, IN, KY, OH, and WV. (Hearing site: Indianapolis, IN.)

MC 145250 (Sub-1F), filed August 21, 1978. Applicant: ROBERT R. MACKEN AND LOIS M. MACKEN, a partnership, d.b.a. MACKEN TRANSFER, P.O. Box 1832, Ames, IA 50010. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Electric instruments* for water analysis equipment, and (2) *equipment, materials, and parts* used in the manufacture of the commodities in (1) above, between the facilities of Hach Chemical Co. at Ames, IA, and Berthoud and Loveland, CO, under a continuing contract with Hack Chemical Co., of Loveland, CO. (Hearing site: Des Moines, IA, or Omaha, NE.)

MC 145258F, filed August 21, 1978. Applicant: WALLACE TRANSFER LTD., 405 Industrial Avenue, Vancouver, BC, Canada V6A 2P9. Representative: George LaBissoniere, 1100 Norton Building, Seattle, WA 98104. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and those requiring special equipment), in containers, between the ports of entry on the international boundary line between the United States and Canada at or near Blaine, Lynden, and Sumas, WA, on the one hand, and, on the other, those points in WA in and west of Whatcom, Skagit, Snohomish, King, Pierce, Lewis, and Skamania Counties, restricted to the transportation of traffic moving in foreign commerce and originating at or destined to points in BC, Canada, under continuing contracts with (1) Empire Stevedoring Co., Ltd., of Vancouver, Canada, and (2) Furness Interocean Canada, Ltd., of Vancouver, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary.

NOTE. (1) The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect. (2) In view of the *Geraci* and *Toto* policies (*see, e.g.,* 43 FR 33945) (8-2-78), applicant must satisfy the Commission that its operations will not result in objectionable private and for-hire operations. (Hearing site: Seattle, WA.)

BROKER AUTHORITY

MC 130509F, filed June 20, 1978, previously published in the FEDERAL REGISTER issue of August 17, 1978. Applicant: ROBERT LAMBERT, d.b.a., LAMBERT'S TOURS, 404 East Main Street, Suite 2-A, Ventura, CA 93001. Representative: Michael S. Rubin, 256 Montgomery Street, 5th floor, San Francisco, CA 94104. To engage in operations, in interstate or foreign commerce, as a *broker,* at Ventura, CA, in arranging for the transportation by motor vehicle, of: *Passengers and their baggage,* in special and charter operations, between Ventura, CA, on the one hand, and, on the other, points in the United States (including AK and HI). (Hearing site: Ventura or Los Angeles, CA.)

NOTE.—The purpose of the republication is to show both round trip and one-way operations.

PASSENGER AUTHORITY

MC 118044 (Sub-3F), filed June 27, 1978. Applicant: KEESHIN CHARTER SERVICE, INC., 705 South Jefferson Street, Chicago, IL 60607. Representative: Charles A. Webb, 1250 Connecticut Avenue NW., Suite 600, Washington, DC 20036. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle as passengers, in special and charter operations, beginning and ending at points in IL, MI, IN, OH, MN, KY, TN, FL, GA, CA, AL, NV, CO, KS, IA, MO, TX, WI, and DC, and extending to points in the United States, including AK (except HI). (Hearing site: Chicago, IL.)

MC 144460 (Sub-1F), filed July 18, 1978. Applicant: SHOMER SHABOS BUS CORP., 18 Phyllis Terrace, Monsey, NY 10952. Representative: Sidney J. Leshin, 575 Madison Avenue, New York, NY 10022. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at Monsey, NY, and extending to points in Kings and New York Counties, NY, under continuing contracts with (1) Cong. Menachem Tzadik, of Brooklyn, NY, (2) Cong. Tifereth Israel, of Monsey, NY, (3) Cong. Beth Yitzchock, of Monsey, NY, (4) Cong. Bais Yitzchok Kasirer, of Monsey, NY, and (5) Cong. Khal Torat Chaim, of Monsey, NY. (Hearing site: New York, NY.)

MC 145008 (Sub-2F), filed August 17, 1978. Applicant: WESTERN SAFARIS, INC., d.b.a. HEART OF AMERICA TOURS, 3379 Wedgewood Drive, El Paso, TX 79925. Representative: D. Paul Stafford, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage,* limited to the transportation of not more than 20 passengers (excluding the driver) in one vehicle at one time, in one-way and round trip special operations, in camping and sightseeing tours, from El Paso, TX, Denver, CO, and Los Angeles and San Francisco, CA, to points in AZ, CA, CO, NM, NV, TX, and UT, and return. (Hearing site: Los Angeles or San Francisco, CA.)

[FR Doc. 26195 Filed 9-18-78; 8:45 am]

[7035-01]

[AB 10 (SDM)]

NORFOLK & WESTERN RAILWAY CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Norfolk & Western Railway Co., has filed with the Commission its amended color-coded system diagram map in docket No. AB 10 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on August 28, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

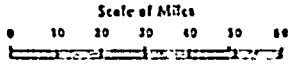
Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State-designated agency. Copies of the map also may be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 10 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

SYSTEM DIAGRAM MAP
NORFOLK AND WESTERN RAILWAY COMPANY

including the following lines:

Akron, Canton and Youngstown Railroad Company
Chesapeake Western Railway Company
Lake Erie and Fort Wayne Railroad Company
Lorain and West Virginia Railway Company
New Jersey, Indiana and Illinois Railroad Company
Norfolk, Franklin and Danville Railway Company
Pittsburgh and West Virginia Railway Company
Wabash Railroad Company
Wheeling and Lake Erie Railway Company



LEGEND

(1) Lines anticipated will be subject of abandonment application within 3 years.

(2) Lines potentially subject to abandonment.

(3) Abandonment applications pending before Commission.

(4) Lines which are being operated under the Rail Service continuation provisions of Section 1a(6) (a) of the Act or of Section 304(c) (2) of the Regional Rail Reorganization Act of 1973.

(5) All other lines or portions of lines which the carrier owns, and operates, directly or indirectly.

(6) Trackage Rights.

(7) STANDARD METROPOLITAN STATISTICAL AREAS

1	Norfolk, Virginia Beach, Portsmouth, VA-NC	22	Cincinnati, OH-KY-IN
2	Petersburg, Colonial Heights, Hopewell, VA	23	Hamilton-Middleton, OH
3	Lynchburg, VA	24	Muncie, IN
4	Roanoke, VA	25	Fort Wayne, IN
5	Raleigh, Durham, NC	26	Indianapolis, IN
6	Greensboro, Winston-Salem, High Point, NC	27	Anderson, IN
7	Kingsport, Bristol, TN-VA	28	Lafayette-West Lafayette, IN
8	Huntington-Ashland, WV-KY-OH	29	South Bend, IN
9	Pittsburgh, PA	30	Chicago, IL
10	Wheeling, WV-OH	31	Gary-Hammond-East Chicago, IN
11	Steubenville-Weirton, OH-WV	32	Champaign-Urbana-Rantoul, IL
12	Buffalo, NY	33	Decatur, IL
13	Erie, PA	34	Bloomington-Normal, IL
14	Cleveland, OH	35	Peoria, IL
15	Canton, OH	36	Springfield, IL
16	Akron, OH	37	St. Louis, MO-IL
17	Lorain-Elyria, OH	38	Columbia, MO
18	Columbus, OH	39	Kansas City, MO-KS
19	Toledo, OH-MI	40	Des Moines, IA
20	Detroit, MI	41	Omaha, NB-IA
21	Lima, OH		

Note 1 Numbers designating SMSA's on maps enclosed in hexagon.

Numerical identification of lines in Categories 1 thru 4 (in accordance with 49 CFR 1121.20(b)) on NW system diagram map, interrelated state maps, and as listed and described on separate statement accompanying the maps and marked for identification as Appendix A.

CATEGORY 1

1-1 Lorain & West Virginia Railway Company
1-4 Easterly Portion of Gary District
1-5 Westerly Portion of Gary District
1-6 Carey to Delphos (AC&Y)
1-7 Kokomo to Frankfort
1-8 Ottumwa Branch
1-9 Pittsfield Branch
1-10 Portion of Champaign Branch

CATEGORY 2

NW has none in this category.

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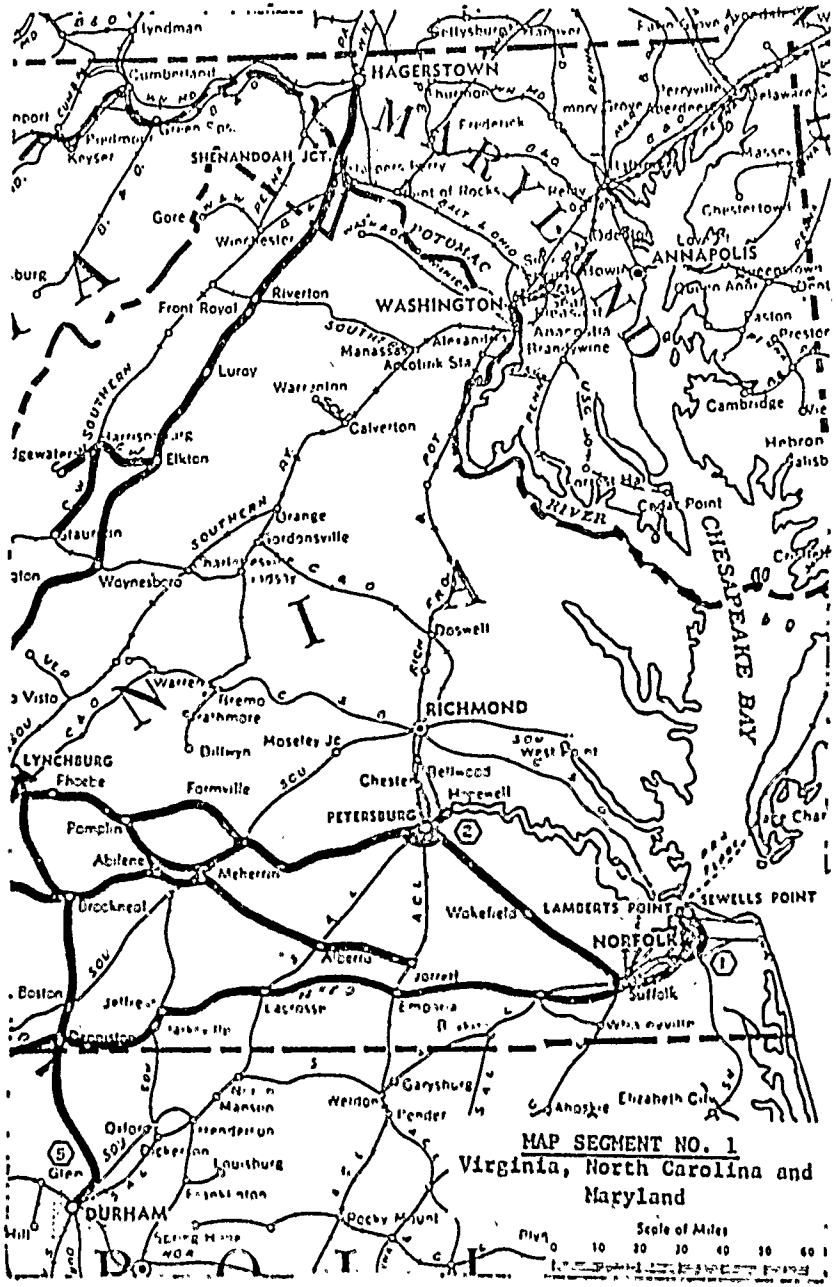
CATEGORY 3

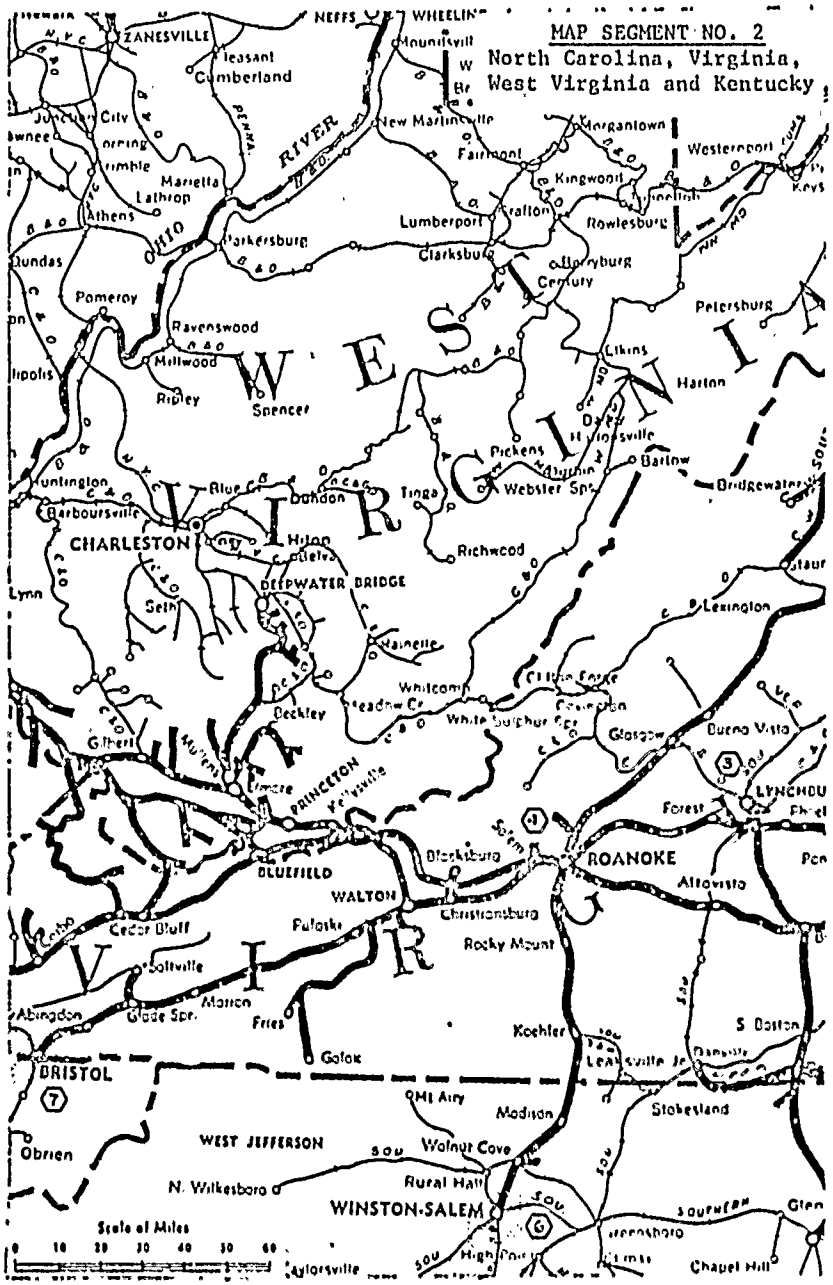
3-3 Keokuk Branch
3-4 Streator Branch
3-7 Connersville Branch
3-8 Rushville Branch
3-9 Portion of Steubenville Branch

CATEGORY 4

NW has none in this category.



Rev. 4-12-78



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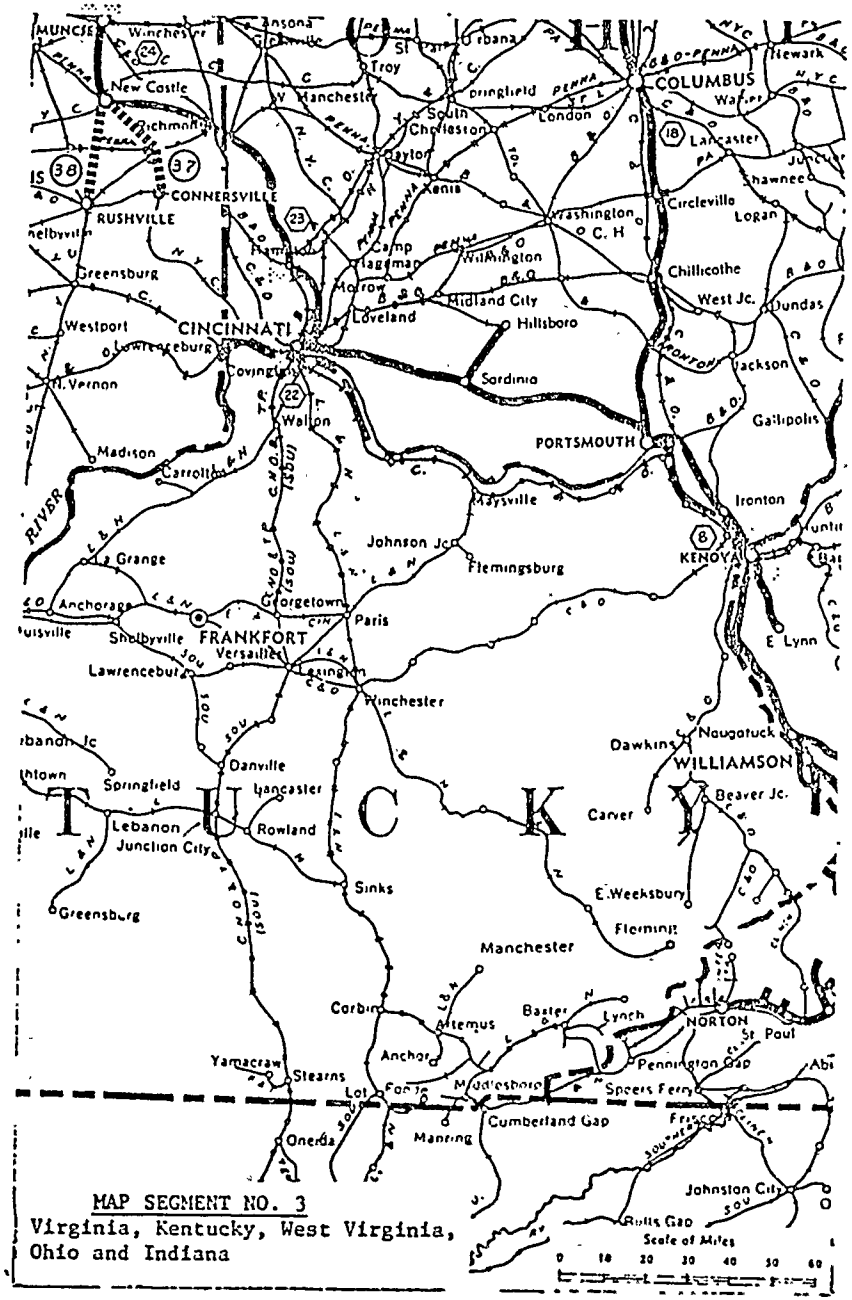
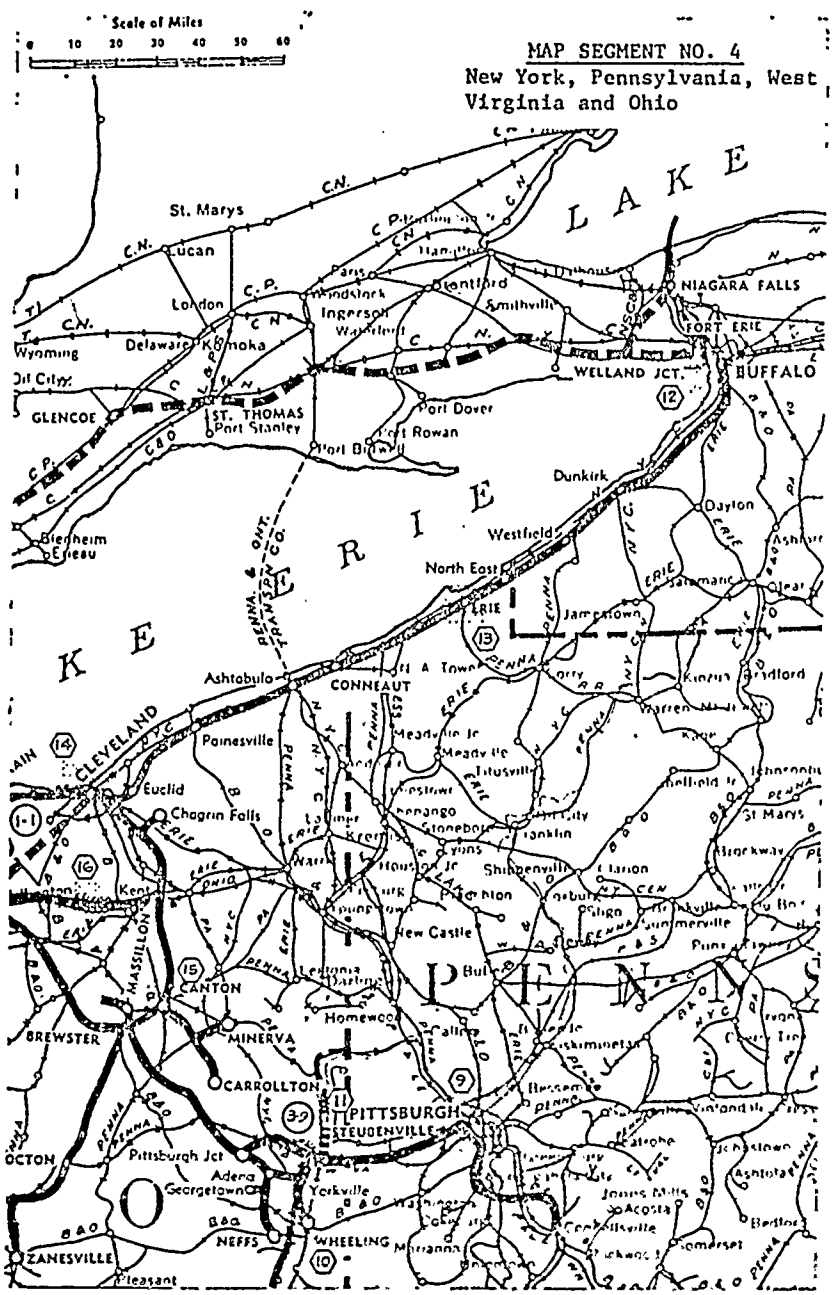


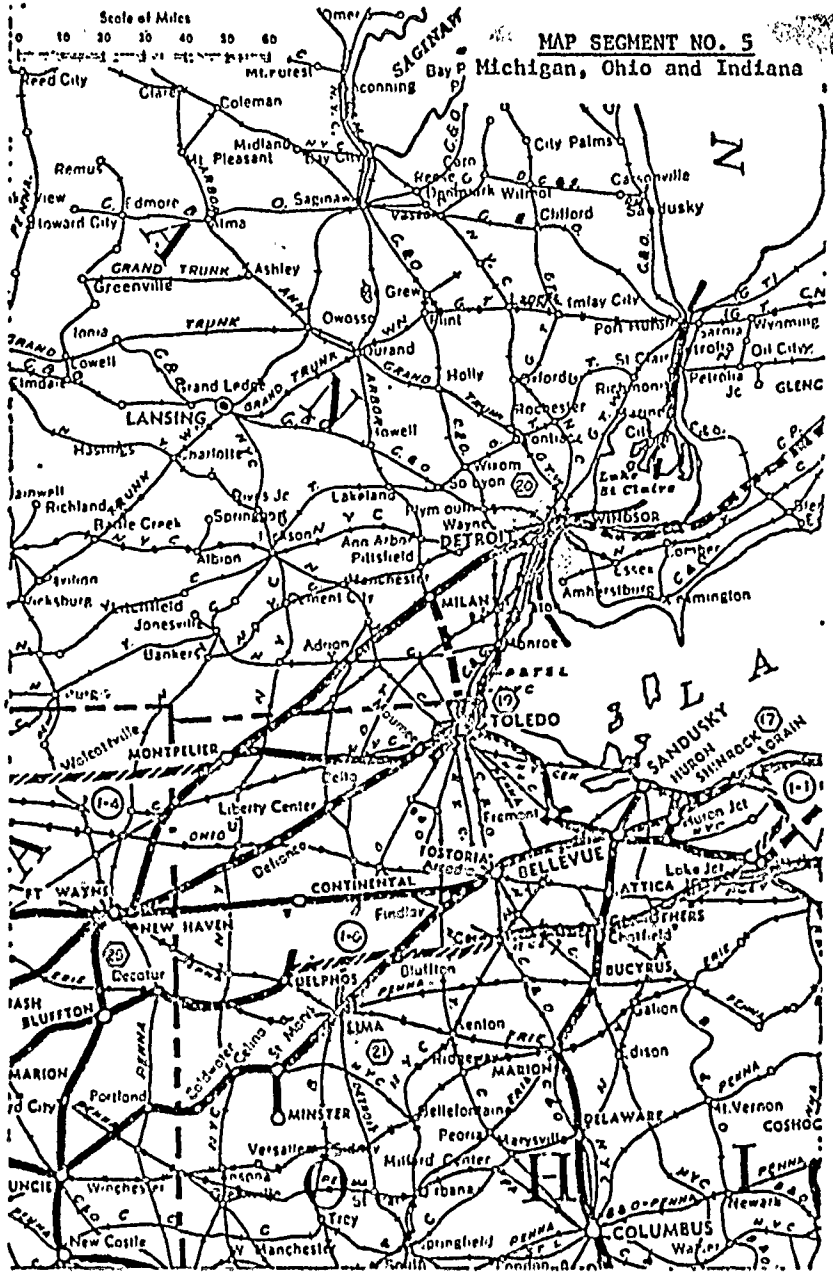
MAP SEGMENT NO. 3
Virginia, Kentucky, West Virginia, Ohio and Indiana

Rev. 4-12-78

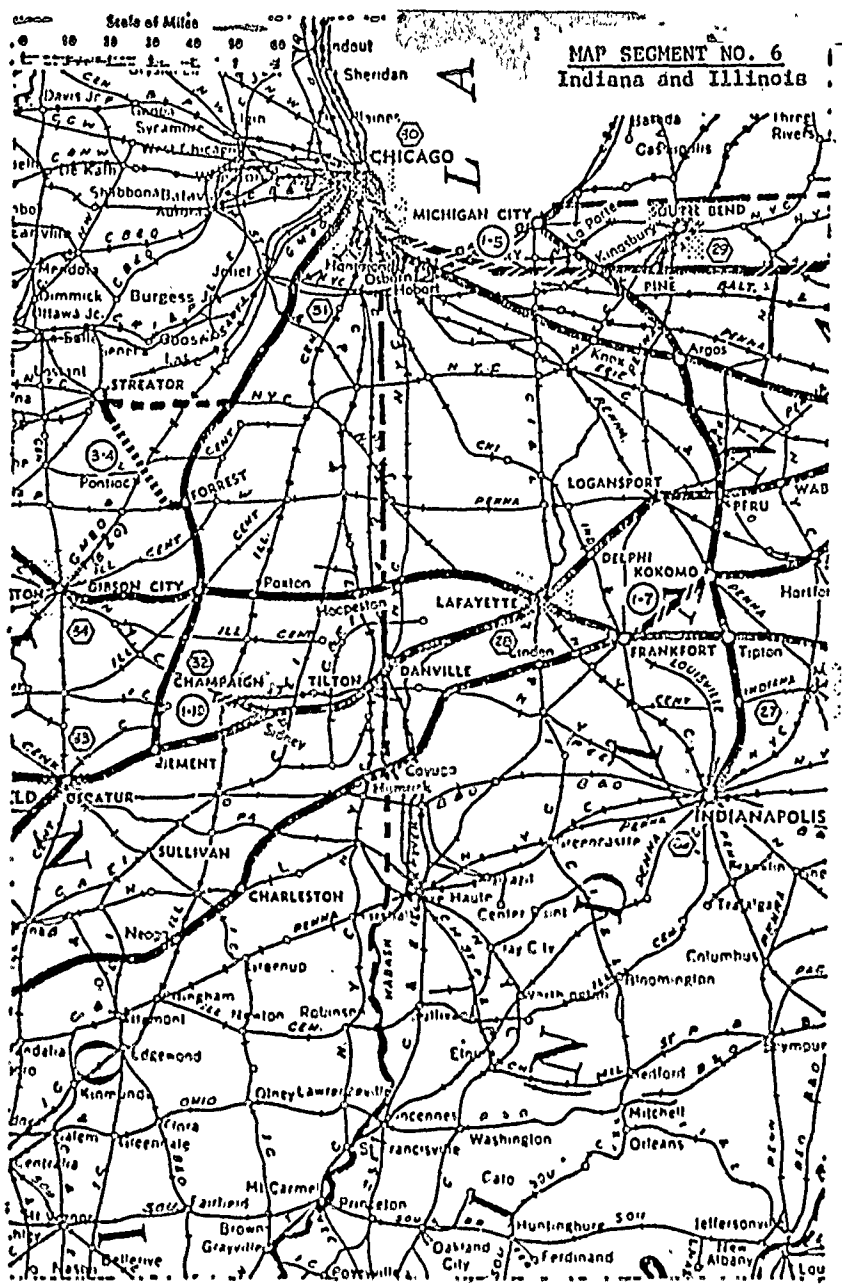


MAP SEGMENT NO. 4
New York, Pennsylvania, West Virginia and Ohio

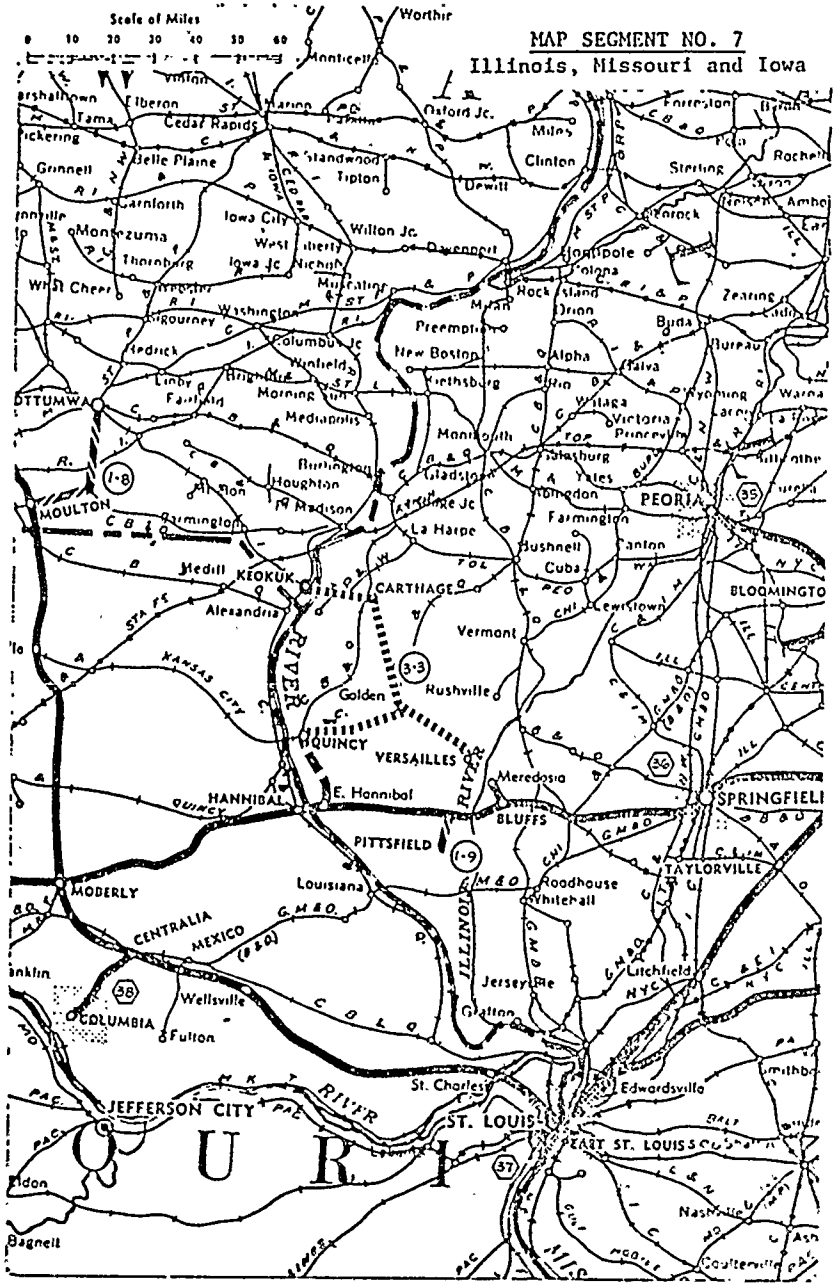
Rev. 4-12-78



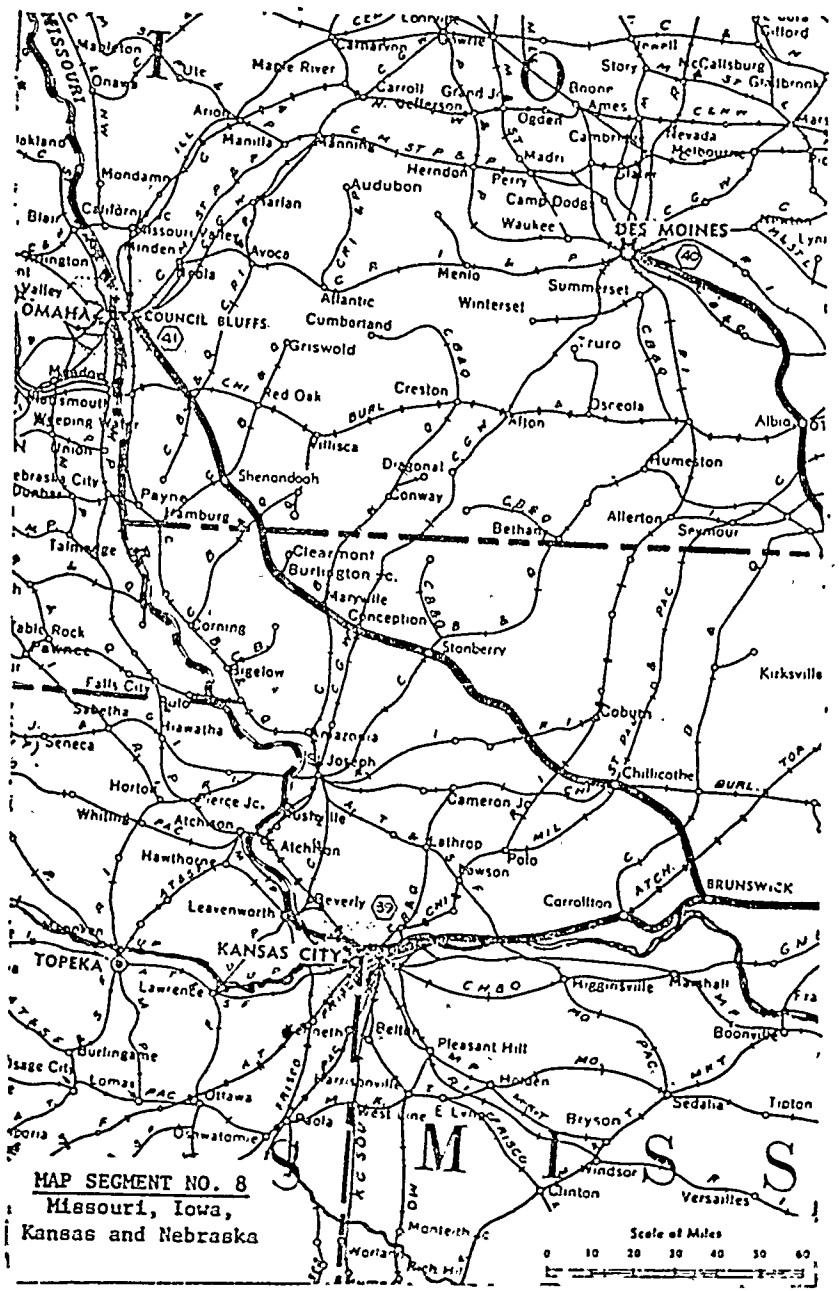
Rev. 4-12-78



Rev. 4-12-78



Rev. 4-12-78



Rev. 4-12-78

Appendix A
Page 1 of 4 Pages
(Revised 4/12/78)

I.C.C. DOCKET NO. AE-10

NORFOLK AND WESTERN RAILWAY COMPANY

RED - Lines or Portions thereof anticipated to be the subject of an abandonment or discontinuance application to be filed within the three year period following date diagram is filed with the Commission

(a) CARRIER'S DESIGNATION	(b) STATE	(c) COUNTY(IES)	(d) MILEPOSTS DELINEATING EACH LINE	(e) AGENCY OR TERMINAL STATIONS STATION	M.P.
(1- 1) Lorain and West Virginia Railway Company	Ohio	Lorain	M.P. 0.0 to 25.25, incl.	*Lake Junction	0.0
				South Lorain	25.0
(1- 4) Easterly Portion, Gary District	Ohio	Williams	M.P. 98.5 to 170.5, incl.	*Pergo, OH	98.5
	Indiana	Steuben		*Edon, OH	105.3
		Lagrange		*Hamilton, IN	113.2
		Elkhart		*Ashley-Hudson	121.4
				*Pelzer	126.5
				*South Milford	131.8
				*Wolcottville	135.8
				Topeka	146.0
				*Stony Creek	151.4
				*Millersburg	154.1
				*Benton	158.0
				*New Paris	161.4
				*Foraker	166.5
				*Wakarusa	170.5
(1- 5) Westerly Portion, Gary District	Indiana	LaPorte	M.P. 200.3 to 246.7, incl.	*Dillon	200.3
		Porter		*Kingsbury	207.3
		Lake		*Magee	209.6
				*Westville	217.2
				*Crocker	230.5
				*Willow Creek	233.7
				*Cary	241.1
				*Tolleston	243.4
			Trackage Rights over B&O-CT Railroad - M.P. 246.7 to 252.4, incl.	*Clark Jct.	246.7
				*State Line Junction	252.4

*Denotes non-agency stations.

Appendix A
Page 2 of 4 Pages
(Revised 4/12/78)

I.C.C. DOCKET NO. AB-10

NORFOLK AND WESTERN RAILWAY COMPANY

RED - Lines or Portions thereof anticipated to be the subject of an abandonment or discontinuance application to be filed within the three year period following date diagram is filed with the Commission

(a) CARRIER'S DESIGNATION	(b) STATE	(c) COUNTY(IES)	(d) MILEPOSTS DELINEATING EACH LINE	(e) AGENCY OR TERMINAL STATIONS STATION	M.P.
(1- 6) Akron, Canton and Youngstown Railroad Company (Carey-Delphos)	Ohio	Putnam Allen Hancock Wyandot	M.P. 1.76 to 53.0	Delphos	1.76
				*Rushmore	5.8
				*Rimer	8.2
				*Vaughnsville	11.4
				Columbus Grove	17.1
				*Pandora	22.4
				*Bluffton	27.7
				*Janera	36.1
				*Arlington	40.0
				*Mt. Blanchard	45.1
				*Pratts	47.9
				*Fisher	53.5
(1- 7) Kokomo-Frankfort	Indiana	Howard Clinton	M.P. 183.3 to 203.5, incl.	Kokomo	183.3
				*Middletons	186.4
				*Russiaville	190.4
				*Forest	194.6
				*Michigantown	199.0
				Frankfort	203.5
(1- 8) Ottumwa Branch	Iowa	Appanoose Davis Wapello	M.P. 243.07 to 278.81, incl.	Moulton	243.07
				*West Grove	250.6
				*Bloomfield	258.1
				*Belknap	263.7
				*Carbon	269.2
				*So. Ottumwa	278.0
				Ottumwa	278.81
(1- 9) Pittsfield Branch	Illinois	Pike	M.P. 482.1 to 488.1, incl.	*Maysville	482.1
				*Pittsfield	488.1
(1-10) Portion of Champaign Branch	Illinois	Champaign	M.P. 336.1 to 338.9, incl.	*Urbana	336.1
				Champaign	338.9

*Denotes non-agency stations.

Appendix A
Page 3 of 4 Pages
(Revised 4/12/78)

I.C.C. DOCKET NO. AB-10

NORFOLK AND WESTERN RAILWAY COMPANY

YELLOW - Lines or Portions thereof for which an abandonment or discontinuance application is pending before the Commission on the date the diagram is filed with the Commission

(a) CARRIER'S DESIGNATION	(b) STATE	(c) COUNTY(IES)	(d) MILEPOSTS DELINEATING EACH LINE	(e) AGENCY OR TERMINAL STATIONS STATION	M.P.
(3- 3) Keokuk Branch	Illinois	Adams	Trackage Rights over DM, Inc., between Quincy and Golden, Illinois, 28.39 miles.	No Stations Served	
	Illinois	Adams	M.P. 478.99 to 533.43, incl.	*Versailles, IL	479.0
		Brown		*Herman	485.4
		Hancock		*Mt. Sterling	488.0
	Iowa	Lee		*Timewell	494.0
				*Clayton	498.9
				*Blacks	503.1
				*Golden	505.6
				*Chatten	508.5
				*Dowen	514.3
				*Denver	519.0
				*Bentley	522.9
				*Carthage	528.0
			Trackage Rights and/or Jointly Owned Trackage between Elvaston and Keokuk	Elvaston	533.4
				Hamilton	539.9
				Keokuk, IA	541.2
(3- 4) Streator Branch	Illinois	Livingston	M.P. 7.25 to 34.38, incl.	*Champlin	9.1
				*Ledemia	11.0
				*McDowell	12.8
				*Pontiac	16.8
				*Dwight	21.3
				*Cornell	26.3
				*Kanville	31.2
(3- 7) Connersville Branch	Indiana	Fayette	M.P. 0.0 to 23.5, incl.	Connersville	0.0
		Wayne		*Beesons	5.3
		Henry		*Milton	10.0
				*Cambridge City	11.8
				*New Lisbon	17.9
				New Castle	23.5

*Denotes non-agency stations.

Appendix A
Page 4 of 4 Pages.
(Revised 4/12/78)

I.C.C. DOCKET NO. AB-10

NORFOLK AND WESTERN RAILWAY COMPANY

YELLOW - Lines or Portions thereof for which an abandonment or discontinuance application is pending before the Commission on the date the diagram is filed with the Commission

(a) CARRIER'S DESIGNATION	(b) STATE	(c) COUNTY(IES)	(d) MILEPOSTS DELINEATING EACH LINE	(e) AGENCY OR TERMINAL STATIONS	
				STATION	M.P.
(3 -8) Rushville Branch	Indiana	Henry Rush	M.P. 1.92 to 24.13, incl.	New Castle	1.92
				*Spiceland	7.7
				*Dunreith	10.1
				*Mays	14.2
				*Sexton	17.2
				Rushville	24.13
(3- 9) Portion of Steubenville Branch	Ohio	Jefferson	M.P. 13.15 to 13.63, incl.	Steubenville	13.6

*Denotes non-agency stations.

[FR Doc. 78-26200 Filed 9-18-78; 8:45 am]

[7035-01]

[AB 9 (SDM)]

ST. LOUIS-SAN FRANCISCO RAILWAY CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the St. Louis-San Francisco Railway Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 9 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on August 21, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State-designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting Docket No. AB 9 (SDM).

H. G. Homme, Jr.,
Acting Secretary.

AB-9—First Amended Line Descriptions for the St. Louis-San Francisco Railway Co.

Lines for which abandonment applications are pending before the Interstate Commerce Commission:

Alabama

(a) Cochrane to York, Ala. (AB-9 (Sub-No. 12)).
(b) Located wholly within the State of Alabama.
(c) Located within the Alabama counties of Pickens and Sumpter.
(d) Railroad mileposts RA-686.46 to RA-728.
(e) Agency stations at Aliceville, Ala. (milepost R-630), and York, Ala. (milepost RA-732).

Missouri

(a) East Lynne to Bolivar, Mo. (Highline) (AB-9 (Sub-No. 9)).
(b) Located wholly within the State of Missouri.
(c) Located within the Missouri counties of Cass, Johnson, Henry, St. Clair, Hickory, and Polk.
(d) Railroad mileposts D-52.0 to D-153.0.
(e) Agency stations at Clinton, Mo. (milepost D-087) and Weaubleau, Mo. (milepost D-132).

Lines which this carrier anticipates will be the subject of an abandonment application to be filed within 3 years:

Missouri

(a) Willow Springs to Winona, Mo.
(b) Located wholly within the State of Missouri.
(c) Located in the Missouri counties of Howell and Shannon.
(d) Railroad mileposts S-294.3 to S-322.6.
(e) Agency station at Willow Springs, Mo. (milepost S-294).
(a) Kissick to Ozark, Mo.
(b) Located wholly within the State of Missouri.
(c) Located in the Missouri county of Christian.
(d) Railroad mileposts A-250.1 to A-257.6.
(e) Agency station at Springfield, Mo. (milepost MP-239), serves trackage.
(a) Kennett to Holcomb, Mo.
(b) Located wholly within the State of Missouri.
(c) Located in the Missouri county of Dunklin.
(d) Railroad mileposts TB-231.5 to TB-242.5.
(e) Agency station at Hayti, Mo. (milepost T-213), serves trackage.

Oklahoma

(a) Poteau to Hugo, Okla.
(b) Located wholly within the State of Oklahoma.
(c) Located in the Oklahoma counties of Le Flore.
(d) Railroad milepost M.P. 445.0 to MP 558.5.
(e) Agency station at Antlers, Okla. (milepost M.P. 542).

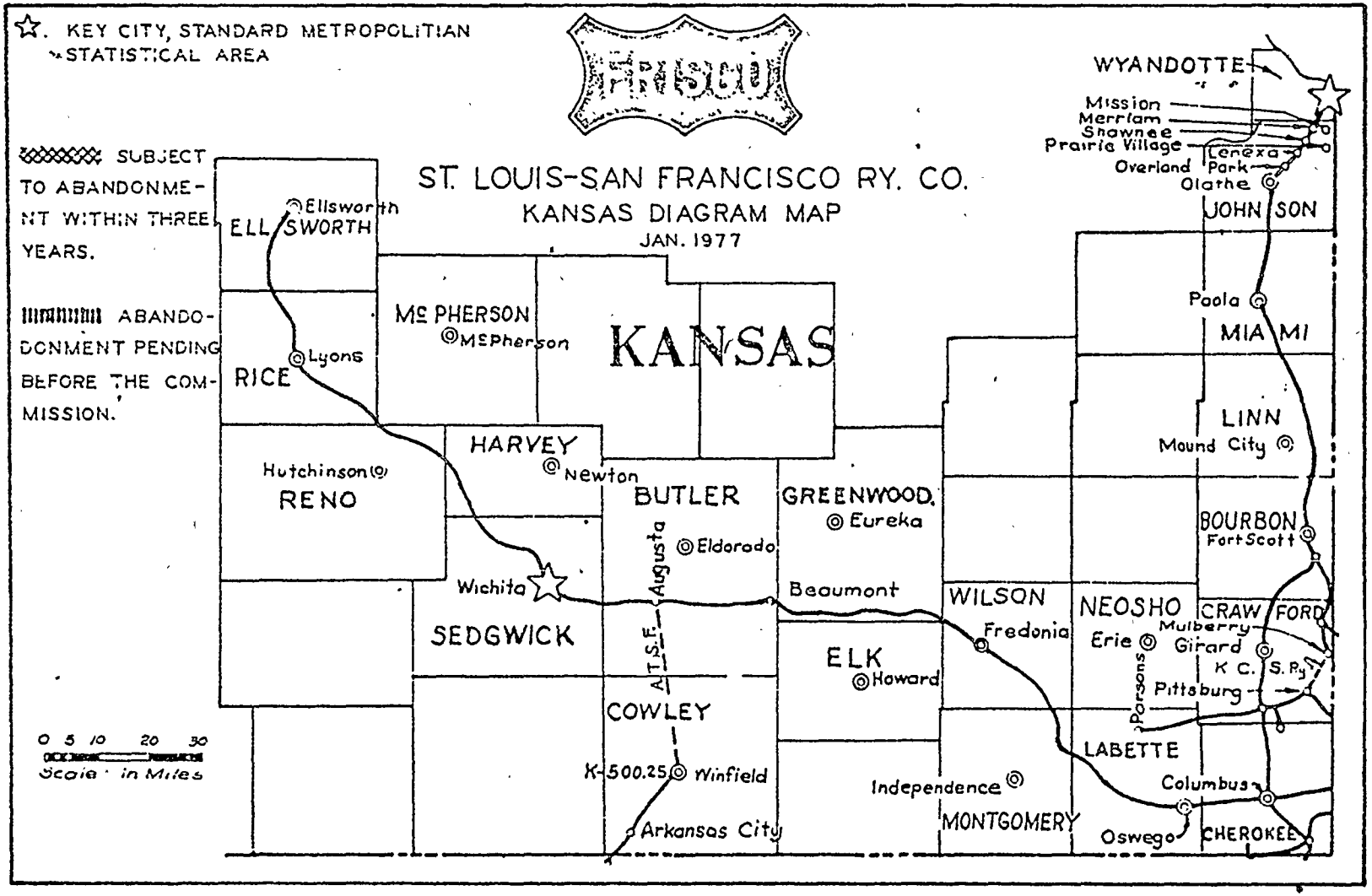
Lines owned and controlled by St. Louis-San Francisco Railway Co. and for which an abandonment application is pending before the Interstate Commerce Commission:

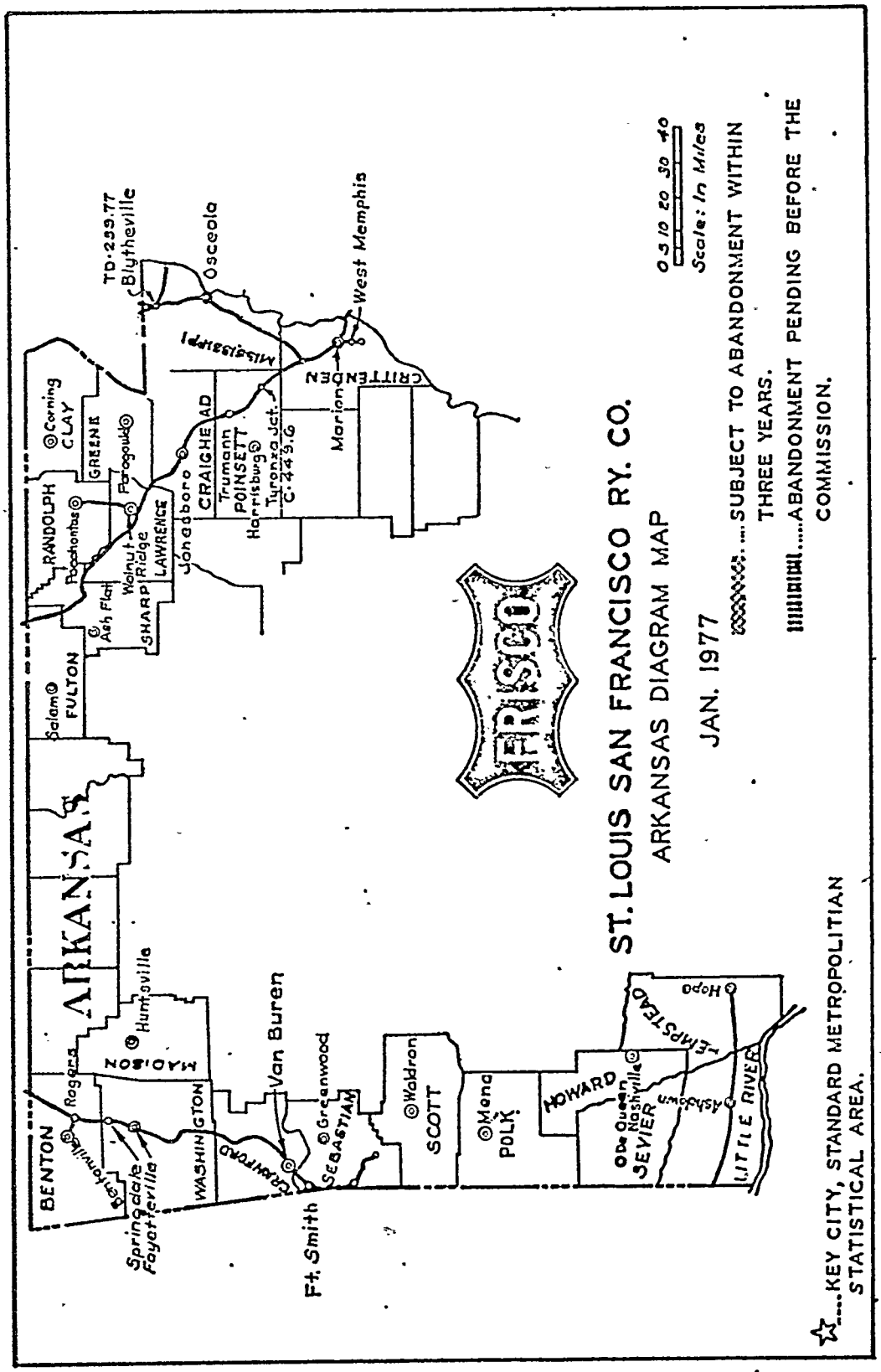
Texas

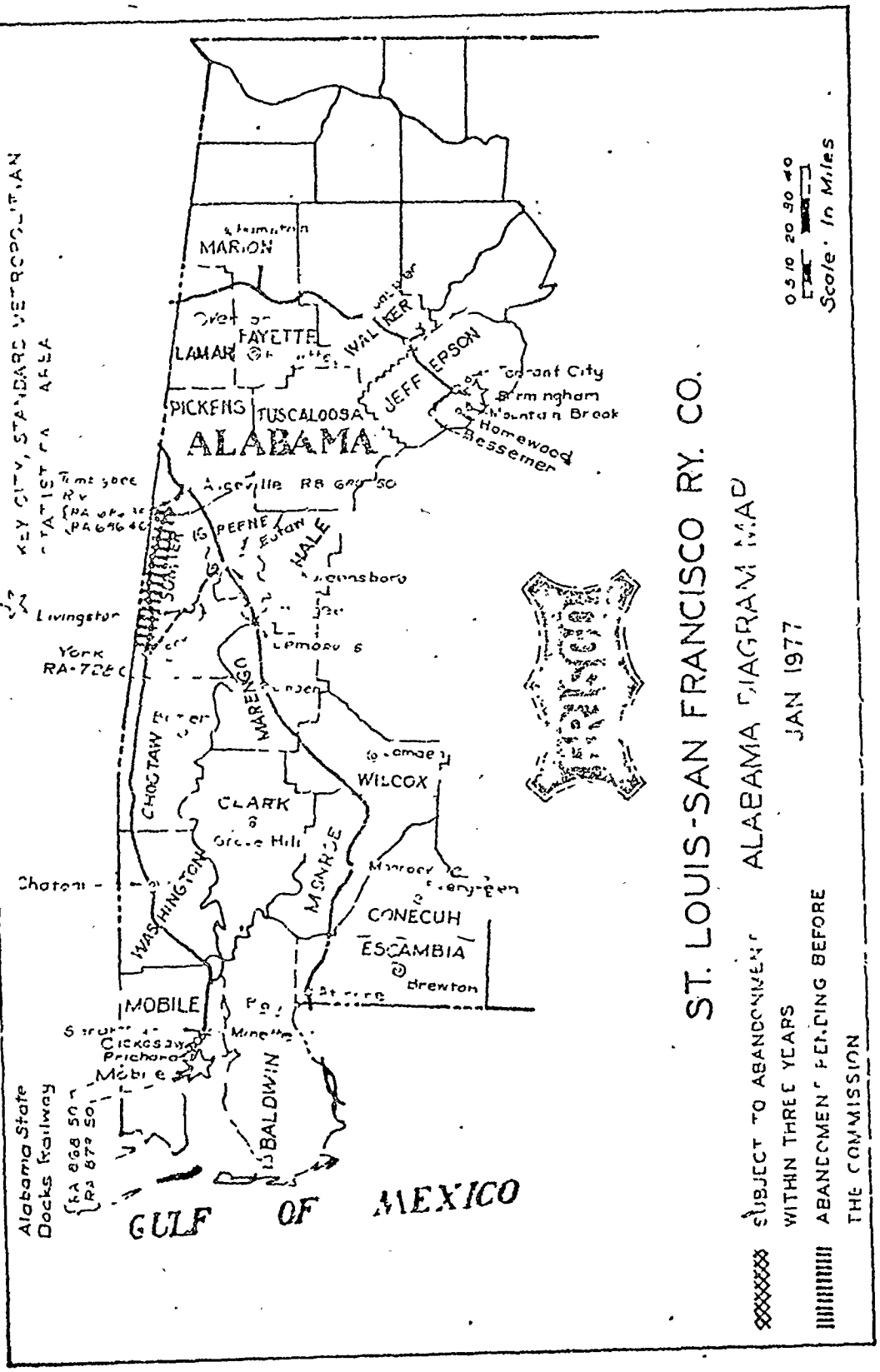
(Quanah, Acme, & Pacific Railway Co.)

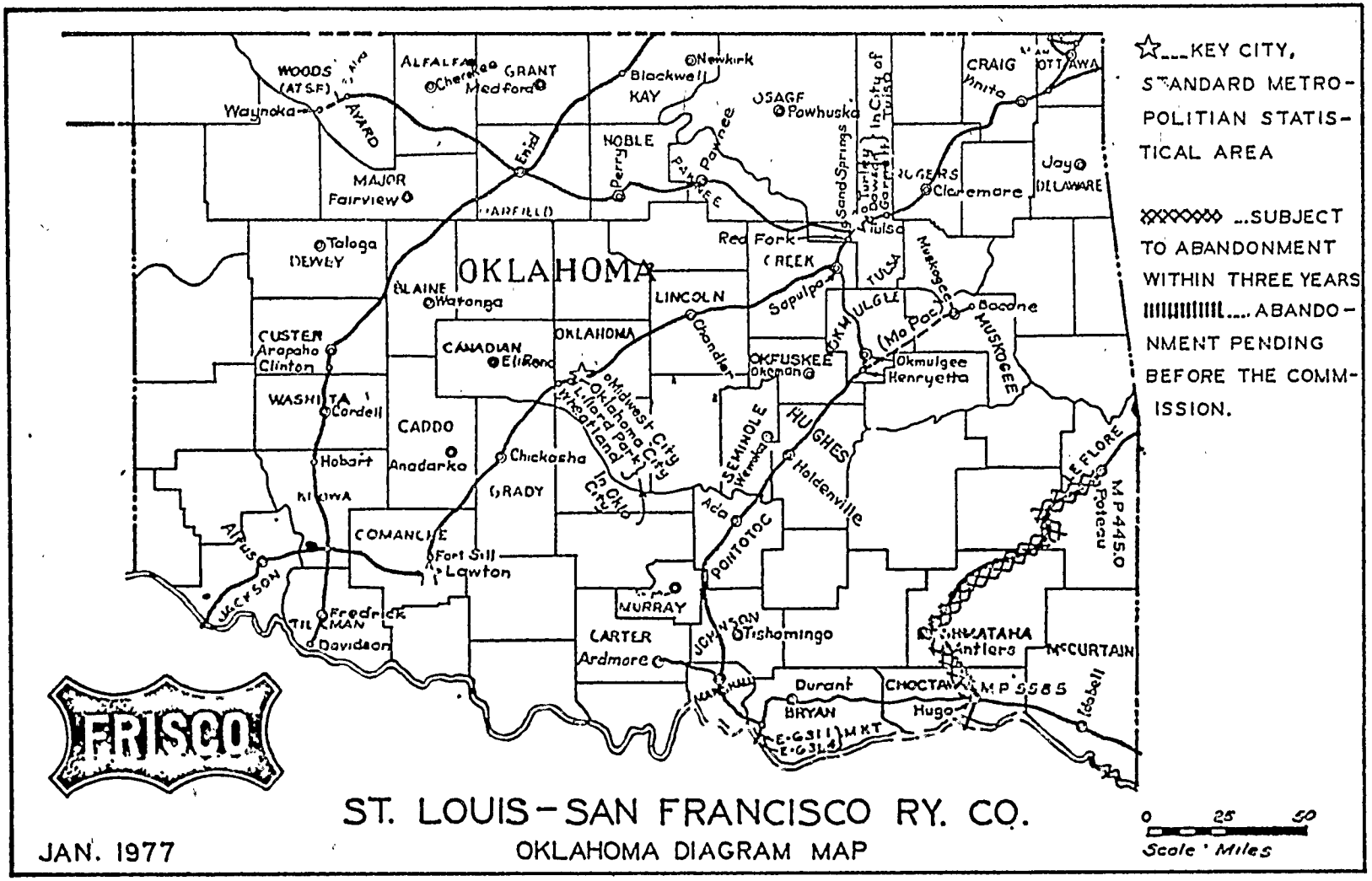
(a) Acme to Floydada, Tex. (AB-109 (Sub-No. 1F)).
(b) Located wholly within the State of Texas.
(c) Located in the Texas counties of Hardeman, Cottle, Motley, and Floyd.
(d) Railroad mileposts M.P.G. 723 to 833.2.
(e) Agency stations at Paducah and Floydada, Tex.

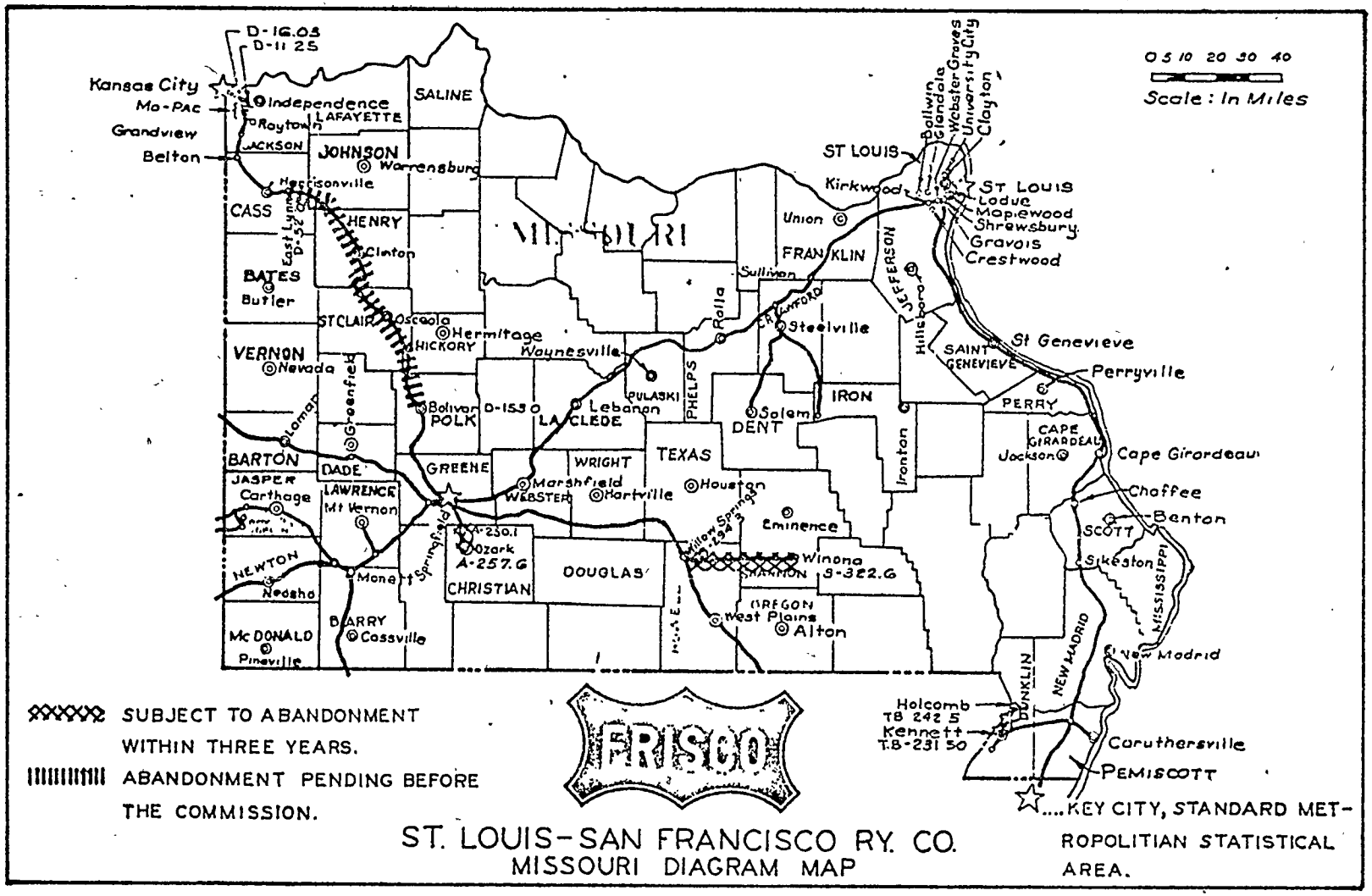
[FR Doc. 78-26193 Filed 9-19-78; 8:45 am]


☆. KEY CITY, STANDARD METROPOLITIAN STATISTICAL AREA
SUBJECT TO ABANDONMENT WITHIN THREE YEARS.
ABANDONMENT PENDING BEFORE THE COMMISSION.
ST. LOUIS-SAN FRANCISCO RY. CO.
KANSAS DIAGRAM MAP
JAN. 1977
KANSAS
ELLSWORTH
Ellsworth
RICE
Lyons
McPHERSON
McPherson
HARVEY
Newton
RENO
Hutchinson
BUTLER
Eldorado
Augusta
GREENWOOD
Eureka
Wichita
Beaumont
SEDGWICK
A.T.S.F.
ELK
Howard
COWLEY
K-500.25
Winfield
Arkansas City
WILSON
Fredonia
Independence
MONTGOMERY
NEOSHO
Erie
Parsons
LABETTE
Oswego
Columbus
CRAWFORD
Mulberry
Girard
K.C.S.Ry.
Pittsburg
CHEROKEE
BOURBON
Fort Scott
LINN
Mound City
MIAMI
Paola
JOHNSON
Olathe
Overland Park
Lenexa
Prairie Village
Shawnee
Merriam
Mission
WYANDOTTE
0 5 10 20 30
Scale in Miles


ST. LOUIS SAN FRANCISCO RY. CO.
ARKANSAS DIAGRAM MAP
JAN. 1977
0 5 10 20 30 40
Scale: In Miles
....SUBJECT TO ABANDONMENT WITHIN THREE YEARS.
....ABANDONMENT PENDING BEFORE THE COMMISSION.
....KEY CITY, STANDARD METROPOLITIAN STATISTICAL AREA.
ARKANSAS
BENTON
WASHINGTON
CRAWFORD
SEBASTIAN
Ft. Smith
Van Buren
Fayetteville
Springdale
Rogers
Huntsville
MADISON
Bentonville
SCOTT
Waldron
POLK
Mena
HOWARD
SEVIER
De Queen
Nashville
Ashdown
LITTLE RIVER
HEMPSTEAD
Hope
FULTON
Salem
RANDOLPH
Pocahontas
CLAY
Corning
GREENE
Paragould
LAWRENCE
Walnut Ridge
Ash Flat
SHARP
CRAIGHEAD
Jonesboro
Trumann
POINSETT
Harrisburg
Turrentine Jct.
C. 244 3.6
CRITTENDEN
Marion
West Memphis
Mississippi
TD-259.77
Blytheville
Osceola


ST. LOUIS-SAN FRANCISCO RY. CO.
ALABAMA DIAGRAM MAP
JAN 1977
SUBJECT TO ABANDONMENT WITHIN THREE YEARS
ABANDONMENT PENDING BEFORE THE COMMISSION
0 5 10 20 30 40
Scale - In Miles
KEY CITY, STANDARD METROPOLITAN STATISTICAL AREA
ALABAMA
GULF OF MEXICO
MARION
LAMAR
FAYETTE
WALKER
JEFFERSON
PICKENS
TUSCALOOSA
Birmingham
Mountain Brook
Homewood
Bessemer
PERRY
HALE
MARENGO
WILCOX
CLARK
CHOCTAW
WASHINGTON
MONROE
CONECUH
ESCAMBIA
Brewton
MOBILE
BALDWIN
Livingston
York
Demopolis
Thomasville
Grove Hill
Chatom
Monroeville
Evergreen
Mobile
Alabama State Docks Railway


☆---KEY CITY, STANDARD METROPOLITIAN STATISTICAL AREA
...SUBJECT TO ABANDONMENT WITHIN THREE YEARS
..... ABANDONMENT PENDING BEFORE THE COMMISSION.
OKLAHOMA
WOODS (AT S.F.)
Waynoka
ALFALFA
GRANT
Medford
Blackwell
KAY
Newkirk
OSAGE
Pawhuska
CRAIG
Vinita
OTTAWA
NOBLE
Perry
Ponca
PAWNEE
Sand Springs
In City of Tulsa
ROGERS
Claremore
Jay
DELAWARE
MAJOR
Fairview
GARFIELD
Enid
Taloga
DEWEY
Red Fork
CREEK
Sapulpa
TULSA
Muskogee
Boone
BLAINE
Watonga
LINCOLN
OKMULGEE
(Mo Pac)
CUSTER
Arapaho
Clinton
CANADIAN
El Reno
OKLAHOMA
Chandler
OKFUSKEE
Okemah
Okmulgee
Henryetta
MUSKOGEE
WASHITA
Cordell
Midwest City
Oklahoma City
Littlefield Park
Spreadland
In Okla City
SEMINOLE
Wewoka
HUGHES
CADDO
Anadarko
Chickasha
Hobart
GRADY
Holdenville
FLORE
Poteau
MP 445.0
Ada
POTTOTOC
COMANCHE
Fort Sill
Lawton
ATOKA
JACKSON
MURRAY
Tishomingo
Fredrick
TILLMAN
Davidson
CARTER
Ardmore
JOHNSTON
CHICKASAW
Antlers
McCURTAIN
Durant
CHOCTAW
MP 558.5
BRYAN
Hugo
Idabell
E-631 MKT
E-634
FRISCO
ST. LOUIS-SAN FRANCISCO RY. CO.
OKLAHOMA DIAGRAM MAP
JAN. 1977
0 25 50
Scale - Miles



ST. LOUIS-SAN FRANCISCO RY. CO.
MISSOURI DIAGRAM MAP

[7035-01]

AGRICULTURAL COOPERATIVE

Intent To Perform Interstate Transportation for Certain Nonmembers

SEPTEMBER 14, 1978.

The following Notices were filed in accordance with section 208(b)(5) of the Interstate Commerce Act provided for under 49 CFR 1047.23. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOp 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Complete legal name of cooperative association or federation of cooperative associations—Big Sky Farmers & Ranchers Marketing Cooperative of Montana.

Principal mailing address—7777 Industry Avenue, Pico Rivera, Calif. 90660.

Where are records of your motor transportation maintained—7777 Industry Avenue, Pico Rivera, Calif. 90660.

Person to whom inquiries and correspondence should be addressed—Harold Goolsbee, Jr., General Manager, 7777 Industry Avenue, Pico Rivera, Calif. 90660.

(2) Complete legal name of cooperative association or federation of cooperative associations—Cape Henlopen Farm Lines Co-Operative.

Principal mailing address—Route 14, West, Milford, Del. 19963.

Where are records of your motor transportation maintained—P.O. Box 304, Milford, Del. 19963.

Person to whom inquiries and correspondence should be addressed—John M. Brown, P.O. Box 304, Milford, Del. 19963.

(3) Complete legal name of cooperative association or federation of cooperative associations—Federated Co-op Transport.

Principal mailing address—P.O. Box 353, Hooperston, Ill. 60942.

Where are records of your motor transportation maintained—P.O. Box 353, Hooperston, Ill. 60942.

Person to whom inquiries and correspondence should be addressed—C. M. Haworth, P.O. Box 353, Hooperston, Ill. 60942.

(4) Complete legal name of cooperative association or federation of cooperative associations—Land O' Lakes, Inc.

Principal mailing address—P.O. Box 116, Minneapolis, Minn. 55440.

Where are records of your motor transportation maintained—P.O. Box 116, Minneapolis, Minn. 55440.

Person to whom inquiries and correspondence should be addressed—Harold Hoelscher, P.O. Box 116, Minneapolis, Minn. 55440.

(5) Complete legal name of cooperative association or federation of cooperative associations—North Pacific Canners & Packers, Inc.

Principal mailing address—P.O. Box 02113, Portland, Oreg. 97202.

Where are records of your motor transportation maintained—P.O. Box 02113, Portland, Oreg. 97202.

Person to whom inquiries and correspondence should be addressed—R. V. Hohanson, P.O. Box 02113, Portland, Oreg. 97202.

(6) Complete legal name of cooperative association or federation of cooperative associations—The Arkansas Rice Growers Cooperative Association d.b.a. Riceland Foods.

Principal mailing address—P.O. Box 927, Stuttgart, Ark. 72160.

Where are records of your motor transportation maintained—P.O. Box 927, Stuttgart, Ark. 72160.

Vice President for Finance—Leland L. Carle, P.O. Box 927, Stuttgart, Ark. 72160.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-26332 Filed 9-18-78; 8:45 am]

[7035-01]

[Notice No. 714]

ASSIGNMENT OF HEARINGS

SEPTEMBER 14, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 113678 (Sub-741F), Curtis, Inc., is assigned for hearing October 2, 1978, at New York, NY, and will be held at Room D-2206, Federal Building, 26 Federal Plaza.

MC 140511 (Sub-5), Autolog Corp., is assigned for hearing October 5, 1978, at New York City, NY, and will be held at Room D-2206, Federal Building, 26 Federal Plaza.

MC 115331 (Sub-449F), Truck Transport Inc., is assigned for hearing October 12, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 134755 (Sub-137F), Charter Express, Inc., is assigned for hearing October 11, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 140829 (Sub-87F), Cargo Contract Carrier Corp., is assigned for hearing October 11, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 142289 (Sub-2), Truck Rail Truck Service Co., Inc., now being assigned for hearing on November 13, 1978 (5 days), at Chicago, IL, in a hearing room to be later designated.

MC 52657 (Sub-742), Arco Auto Carriers, Inc., now being assigned for hearing on November 20, 1978 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 134922 (Sub-259F), B. J. Meadams, Inc., now being assigned for hearing on November 21, 1978 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 104221 (Sub-25F), Econo Lines, Inc., transferred to Modified Procedure.

MC 119226 (Sub-103F), Liquid Transport Corp., is assigned for hearing October 17, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 113855 (Sub-417F), Internation Transport, Inc is assigned for hearing October 17, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 139495 (Sub-332F), National Carriers, Inc., is assigned for hearing October 16, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 139495 (Sub-334F), National Carriers, Inc., is assigned for hearing October 16, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 123270 (Sub-23F), Redlehs Interstate, Inc., is assigned for hearing October 11, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 138830 (Sub-7F), Moodie, Inc., is assigned for hearing October 10, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 138830 (Sub-8F), Moodie, Inc., is assigned for hearing October 10, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 139482 (Sub-37F), New Ulm Freight Lines, Inc., is assigned for hearing October 10, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 113678 (Sub-723F), Curtis, Inc., is assigned for hearing October 19, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 112304 (Sub-133F), Ace Doran Hauling & Rigging Co., is assigned for hearing October 19, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 19157 (Sub-48), McCormack's Highway Transportation, Inc., is assigned for hearing October 16, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 124947 (Sub-106F), Machinery Transports, Inc., is assigned for hearing October 18, 1978, at Chicago, IL, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 126473 (Sub-32F), Harold Dickey Transport, Inc. is assigned for hearing October

13, 1978 at Chicago, IL and will be held at Room 1319 E. M. Dirksen Building, 219 South Dearborn Street.

MC 142827 (Sub-4), De Marle Trucking, Inc. is assigned for hearing October 13, 1978 at Chicago, IL and will be held at Room 1319 E. M. Dirksen Building, 219 South Dearborn Street.

MC 123407 (Sub-449F), Sawyer Transport, Inc. is assigned for hearing October 12, 1978 at Chicago, IL and will be held at Room 1319 E. M. Dirksen Building, 219 South Dearborn Street.

MC 144009 Allstates Transworld Van Lines, Inc., is assigned for hearing October 2, 1978 at St. Louis, MO and will be held at Courtroom 313 third floor, U.S. Courthouse and Customs Building, 1114 Market Street.

MC 123115 (Sub-19F), Packer Transportation Co., is assigned for hearing October 2, 1978 at Carson City, NV and will be held at Room 302 Federal Building, 705 North Plaza Street.

MC 108633 (Sub-15), Barnes Freight Line, Inc. is assigned for hearing October 2, 1978 at Atlanta, GA and will be held at Room 556 Federal Building, 275 Peachtree Street NW.

MC 144011, Hall Systems, Inc., now assigned September 25, 1978, at Birmingham, AL, is postponed to September 27, 1978 (8 days), in the Sheraton Motor Inn-Downtown, 300 North 10th Street., Birmingham, AL.

FF-510F, Rocky Mountain Express, Inc., now being assigned for hearing on November 28, 1978 (4 days), at San Francisco, CA, in a hearing room to be later designated.

MC 144149, Rim Investment, Inc., d.b.a. B & C Transportation, now being assigned for hearing on December 11, 1978 (2 days), at San Francisco, CA, in a hearing room to be later designated.

MC 144170, Nationwide Truck Lines, Inc., now being assigned for hearing on December 6, 1978 (3 days), at San Francisco, CA, in a hearing room to be later designated.

MC 125433 (Sub-145), F-B Truck Line Co., now being assigned for hearing on December 4, 1978 (1 day), at San Francisco, CA, in a hearing room to be later designated.

MC 115826 (Sub-282), W. J. Digby, Inc., now being assigned, for hearing on December 13, 1978 (3 days), at San Francisco, CA, in a hearing room to be later designated.

MC 123407 (Sub-447F), Sawyer Transport, Inc., now being assigned for hearing on December 5, 1978 (1 day), at San Francisco, CA, in a hearing room to be later designated.

MC-F 13434 and MC 1403 (Sub-4), Central Transfer Co.—Purchase (Portion)—Robert Emanuel and Margaret Emanuel d.b.a. Emanuel's Express, now being assigned continued hearing on September 26, 1978 (4 days) in Room 2609, Court House 600 Market Street, Philidelphia, PA.

MC 112520 (Sub-347), McKenzie Tank Lines, Inc., now assigned for hearing on September 25, 1978, at Atlanta, GA is canceled and application dismissed.

MC 117765 (Sub-238), Hahn Truck Line, Inc., now assigned for hearing on October 17, 1978, at Chicago, IL is canceled and Transferred to Modified Procedure.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-26331 Filed 9-18-78; 8:45 am]

[7035-01]

[Ex Parte No. MC-64]

GENERAL TEMPORARY ORDER TO TRANSPORT MEAT BY MOTOR VEHICLE

Decided: August 30, 1978. In the matter of General Order No. 14, Section 210a(a).

Unique characteristics of the meatpacking industry call for modification of our normal practice in handling requests for emergency temporary authority. There is an immediate and urgent need for additional motor carrier service to temporarily supplement the transportation system of the Nation.

To meet this need, the Commission will provide a more flexible way for applicants to obtain temporary authority to render the required motor carrier service.

It is ordered:

Pursuant to section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a)), applications for temporary authority to transport meat by motor vehicle shall, for a period of 90 days, be governed by the following procedures to expedite the filing and processing of those applications:

(1) A meatpacker, upon failing to find a carrier authorized to perform the needed peak service, may file a verified statement to that effect in support of an applicant for ETA to provide the service. The district supervisor receiving the application will accept the statement as evidence of the matters recited, and will make a recommendation without following the usual procedure of notifying other district offices. Other carriers will not be contacted.

(2) If, in its verified statement supporting an ETA application, the packer reports a failure to obtain a commitment after contacting carriers authorized to serve the need, the district supervisor receiving the application will seek specific reasons for the carriers' negative response to the packer. The district supervisor will then make a recommendation based on all known data.

(3) In an ETA application, where the supporting packer cannot pinpoint the time or destination of the shipment(s), but can, on the basis of prior experience, show a likely time period up to 30 days and a likely destination area in designated States, the field staff and Commission, respectively, will consider that showing in making a recommendation and rendering a decision.

This expedited procedure is available upon condition that the applicant carrier complies with all applicable requirements concerning tariff publications, evidence of security for the protection of the public, and designation of agents for service of process, and that such tariff publications quote rates, fares, and charges no lower than those of existing rail, water, or motor carriers in the territory in which the operations are to be authorized.

Service performed under temporary authority granted pursuant to this procedure shall in no way constitute evidence or a showing warranting future issuance of a certificate of public convenience and necessity or permit, as provided in section 207(a) of the Act (49 U.S.C. 307(a)) and section 209(b) of the Act (49 U.S.C. 309(b)).

This decision shall become effective October 1, 1978.

Notice of this decision shall be given to motor carriers, other parties of interest, and to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Murphy, Brown, Stafford, Gresham, and Clapp.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-26329 Filed 9-18-78; 8:45 am]

[7035-01]

[MC 111320 (Sub-68G)]

KEEN TRANSPORT, INC.

Extension—Gateway Elimination (Hudson, OH)

Decided: September 6, 1978. Upon consideration of the record in this proceeding and of:

(1) Petition of applicant, filed June 26, 1978, for reconsideration;

(2) Reply by Home Transportation Co., Inc., protestant, filed July 10, 1978;

(3) Petition of Home Transportation Co., Inc., protestant, filed July 10, 1978, for reconsideration;

(4) Late-tendered reply by applicant, to the petition in (3) above submitted for filing August 1, 1978.

In a decision served June 9, 1978 we accepted an amendment of the authority sought by applicant and granted authority encompassing the scope of the amendment. Protestant Home points out that the effect of these actions was to grant authority in part I(33) (formerly part I(w')) broader than originally sought by applicant as set forth in the FEDERAL REGISTER notice. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and could be prejudiced by the lack of proper notice of the authority described in our previous decision, a notice of the authority actually granted in that part will be published in the

FEDERAL REGISTER. Issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of that publication during which period any proper party in interest may file a petition to reopen or for any other appropriate relief setting forth in detail the precise manner in which it has been prejudiced.

It is ordered: The late-tendered pleading in (4) above is accepted for filing inasmuch as it is only 1-day late and its admission will not prejudice any party to the proceeding.

Except as noted above, the petitions are denied because the findings of Appellate Division 2 are in accordance with the evidence and the applicable law.

If applicant does not comply with the appropriate requirements set forth in the Code of Federal regulations (49 CFR 1043, 1044, and 1307) within 90 days after the date of service of this decision, the grant of authority will be void, and the application will stand denied.

By the Commission, Division 2, acting as an appellate division, Commissioners Stafford, Murphy, and Clapp. Commission Murphy not participating.

H. G. HOMME, Jr.,
Acting Secretary.

APPENDIX

SERVICE AUTHORIZED IN PART I(33)

To transport self-propelled roadbuilding equipment and parts thereof, in driveway and truckaway service, from points in Illinois to points in Kentucky, Louisiana, Michigan, North Carolina, South Carolina, and Tennessee.

CONDITION

The above service authorization is subject to prior publication in the FEDERAL REGISTER of a notice of the authority actually granted in this portion of the application.

[FR Doc. 78-26333 Filed 9-18-78; 8:45 am]

[7035-01]

[Notice No. 25]

SPECIAL PROPERTY BROKERS

SEPTEMBER 13, 1978.

The following applicants seek to participate in the property broker special licensing procedure under 49 CFR 1045A authorizing operations as a broker at any location, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of property (except household goods), between all points in the United States including AK and HI. Any interested person shall file an original and one (1) copy of a verified statement in opposition limited in scope to matters regarding applicant's fitness within 30 days after this notice. Statements must be mailed to: Broker Entry Staff, Room 2379, Interstate Commerce Commission, Washington, D.C. 20423. Opposing parties shall serve one (1) copy of the statement in opposition concurrently upon applicant's representative, or applicant if no representative is named.

If an applicant is not otherwise informed by the Commission, it may commence operation 45 days after this notice.

B-78-96, filed August 25, 1978. Applicant: DISTRIBUTION CENTERS, INC., 1310 Dublin Road, Columbus, OH 43215. Representative: Stanley E. McCormick, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209.

B-78-97, filed August 25, 1978. Applicant: FOUR WINDS FORWARDING, INC., 7035 Convoy Court, San Diego, CA 92111. Representative: Robert J. Gallagher, 1000 Connecticut Avenue NW., Suite 1200, Washington, D.C. 20036.

B-78-100, filed August 24, 1978. Applicant: FOUR WINDS VAN LINES, INC., 7035 Convoy Court, San Diego, CA 92111. Representative: Robert J. Gallagher, 1000 Connecticut Avenue NW., Suite 1200, Washington, D.C. 20036.

B-78-101, filed August 28, 1978. Applicant: PAD CONSULTANTS, 4582 Timothy Lane, Canal Winchester, OH 43110. Representative: Kathleen L. Maher, 100 East Broad Street, Columbus, OH 43215.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-26330 Filed 9-18-78; 8:45 am]

[7035-01]

[Ex Parte No. MC-116]

CONSIDERATION OF RATES IN OPERATING RIGHTS APPLICATION PROCEEDINGS (GENERAL POLICY STATEMENT)

Proposed Change of Policy

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed issuance of policy statement.

SUMMARY: The Commission proposes to issue a general policy statement governing the consideration of rates in operating rights application proceedings. The Commission believes that parties should have the option of placing rate levels in issue in operating rights cases. The ability of an applicant to offer the shipping public lower rates based on operating efficiencies is a factor that should be considered in determining whether there is need for additional service. The consideration of rates in operating rights application proceedings represents a change in policy. Accordingly, interested persons will be permitted to file comments before a final policy statement is adopted and issued.

COMMENTS: All interested persons are invited to comment. Comments should be filed with the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423.

DATES: Comments must be received within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, or Harvey Gobetz, 202-275-7693.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Entry Control Task Force, in its report submitted July 6, 1977, entitled "Improving Motor-Carrier Entry Regulation," recommended to the Chairman of the Commission that rates, at the option of applicant, be made a consideration in operating rights application proceedings. The report stated:

> One of the most common criticisms of the Commission's decision-making process in the operating rights area is its refusal to take into account the rates proposed to be charged by the applicant. Shippers and carriers alike offer the opinion that many, and perhaps a majority, of applications for authority to serve existing sources of traffic are based on the support of shippers who anticipate a rate advantage * * *.

The Commission served a Notice of Proposed Rulemaking on February 24, 1978 (43 FR 7675). Numerous comments were received. Upon consideration of the comments, the Commission has decided not to promulgate specific regulations. Rather, the Commission has decided to issue a general policy statement setting forth guidelines for the consideration of rates in operating rights application proceedings.

By recognizing rates as a factor in motor carrier operating rights application proceedings, we seek to have this underlying issue dealt with explicitly. Furthermore, by allowing carriers who can operate more efficiently to enter the market through introduction of rate considerations, we believe that increased efficiency by all carriers will be encouraged with resultant benefits to the national economy.

Past Commission policy has been that rates are generally not a matter for consideration in common carrier application proceedings unless existing rates are so high as to constitute a virtual embargo. *Porter Transp. Co. Common Carrier Application,* 74 MCC 675 (1958), *H. L. & F. McBride Extension—Ohio,* 62 MCC 779 (1954); or where the rate benefit is attributable to differences between two modes of transportation, *Schaffer Transportation Co. v. United States,* 355 U.S. 83,

78 S. Ct. 173, 2 L. Ed. 2d 117 (1957); *I. C. C.* v. *J-T Transport Co.*, 368 U.S. 81, 82 S. Ct. 204, 7 L. Ed. 2d 147 (1961). In all other respects, the prevailing view has been that, if shippers are dissatisfied with existing rates, the proper place to test the legality of those rates is in a complaint proceeding, and not in an application proceeding. See *American Trucking Ass'n.* v. *United States*, 326 U.S. 77, 86-87, 65 S. Ct. 1499, 89 L. Ed. 2065 (1945); *Auclair Transportation, Inc.* v. *United States*, 221 F. Supp. 328, 333-334 (D. Mass. 1963), *aff'd per curiam*, 376 U.S. 514, 84 S. Ct. 966, 11 L. Ed. 2d 968 (1964).

Section 207(a) of the Interstate Commerce Act, 49 U.S.C. 307(a), provides in pertinent part that a proposed common carrier service shall be authorized to the extent it "is or will be required by the present or future public convenience and necessity." Nowhere does the act define the term "Public convenience and necessity." It is therefore clear that Congress intended the Commission to have broad discretion in determining where "public convenience and necessity" lies. That discretion, however, must be exercised in conformity with the provisions of the National Transportation Policy, 49 U.S.C. preceding section 1.

The National Transportation Policy requires the Commission to "recognize and preserve" the different modes of transportation; and "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers." The courts have generally stated that competition between different modes of transportation, *I.C.C.* v. *Parker*, 326 U.S. 60, 65 S. Ct. 1490, 89 L. Ed. 2051 (1945), as well as competition within the same mode of transportation, *Bowman Transportation, Inc.* v. *Arkansas-Best Freight, Inc.*, 419 U.S. 381, 95 S. Ct. 438, 42 L. Ed. 2d 447 (1974), is a relevant factor to be considered by the Commission in determining whether the grant of an application would further the National Transportation Policy. *Trans-American Van Service, Inc.* v. *United States*, 421 F. Supp. 308, 321-322 (1976).

Cases where a carrier sought to provide service to an area already served by basically the same type of transportation, only at a lower rate, have been distinguished from cases where an applicant carrier seeks to compete for traffic now handled exclusively by a different mode of transportation. See *Carl Subler Trucking, Inc., Extension—Southern States*, 77 MCC 707 (1958). In the latter situation it has been held that the rate benefit attributable to differences between the two modes of transportation is an "inherent advantage" of the competing type of carrier and must be considered by the Commission. *Schaffer, supra; J-T Transport Co. supra.*

There is an analogy between consideration of the inherent advantages of different modes of transportation and consideration of the level of rates assessed by carriers of the same mode. Competition within a mode is just as important as competition between modes. If lower rates to be offered by an applicant are based on efficient operations, this is a relevant factor for the Commission to consider in reaching ultimate findings concerning competition and the sound economic condition of the industry. *Trans-American, supra*, 421 F. Supp. at 327-328.

We believe that the inability or unwillingness of existing carriers to offer rates competitive with the proposed service, either for lack of interest in the traffic, or because of the inefficiency or unsuitability of their operations, may well indicate a public need for additional service. Accordingly, applicants in their presentations may show that rates are an issue between supporting shippers and existing carriers. Upon doing so they can expect the Commission to treat this as one factor in determining public convenience and necessity.

The Commission believes that, in some cases, rates are already an underlying issue in operating rights proceedings. In such cases, the parties have generally addressed the nature of the proposed service rather than the level of the proposed rates. See *Robinson Common Carrier Application*, 126 MCC 180 (1976); *Maxwell Co., Ext.—Chicago to Cincinnati*, 112 MCC 235 (1970); *Dieckbrader Express, Inc., Extension—Massillon, Ohio*, 103 MCC 540 (1967); and *Vancouver Airline Limousines Ext.—Charter Operations*, 71 MCC 101 (1957). Although the Commission has often recognized the efficiencies and economies that would flow from a proposed service innovation, it has generally not considered the direct benefits which would accrue to the shipper from having a lower rate available. For example, shippers who support a "no frills" or less inclusive service than that offered by existing carriers, are often actually seeking a less costly service at lower rates. We believe that the time has come to deal directly with rates when rate issues are raised in operating rights proceedings.

The National Transportation Policy requires that the Commission promote "safe, adequate, economical, and efficient service" while avoiding unfair or destructive competitive practices. That goal can be furthered by considering rate issues in operating rights cases. We do not believe that the consideration of rate matters will result in the development of destructive competitive practices in the motor carrier industry. On the contrary, the consideration of rates in operating rights application proceedings will encourage economic and efficient service.

PROPOSED POLICY STATEMENT

1. *General.* The Commission's policy is to permit any party in an application proceeding for permanent motor carrier authority for the transportation of either passengers or property to raise the issue of rates. The introduction of rate considerations in an operating rights case is optional, not mandatory. By making rates an optional factor in our determination of public convenience and necessity in common carrier application proceedings, we seek to insure that the parties have the opportunity to make all relevant factors a part of the record on which our conclusions are based. In this statement, "rates" includes all rates, fares, and charges.

2. *Notice of reliance on rate considerations.* Applicants electing the option of placing rates in issue must attach to the application form a brief statement that they intend to offer rates lower than those presently available from existing motor carriers, together with a tentative schedule of the proposed rates and charges for the complete service involved. Public notice of an applicant's reliance, in part, on rate issues will be given by publication in the FEDERAL REGISTER. Protestants wishing to raise rate issues in challenging an application must so indicate in their protests, along with the basis of their challenge. If the issue is raised by a protestant, applicant has no obligation to introduce evidence on the subject.

3. *Burden of proof.* If an applicant elects to place rates in issue, it has the burden of proof as to all aspects of public convenience and necessity, including its ability to perform the proposed service at rates lower than those of other carriers. However, an applicant in an operating rights case need not assume the burden of establishing that such rates will be just and reasonable and otherwise lawful. Rather, an applicant's evidence should relate to its ability to offer the proposed service at a lesser rate than existing carriers based on efficiency of operations, increased productivity, or other relevant considerations. This policy does not prejudge the lawfulness or change any evidential burden regarding initial rates and will not impair the right of any person to protest a rate after it is filed with the Commission.

4. *Rate evidence.* Evidence to be submitted by an applicant in support of its proposed rates should include, but need not be limited to, the following: (1) a comparison of applicant's proposed rates, fares, and charges with those maintained by existing motor

carriers; (2) attempts, if any, by those supporting the application to negotiate reduced rates with existing carriers; (3) a showing that the low rates will not impair applicant's financial fitness; and (4) a narrative description of Applicant's operational efficiencies or advantages which enable it to provide lower rates. The weight to be accorded the rate factor will vary on a case-by-case basis, according to the strength of applicant's evidence as determined by the Commission.

5. *Fulfilling the rate commitment.* Applicants that depend upon rates to support a proposed service should fulfill their rate commitment. If necessary, the Commission may impose an express requirement that they do so. For example, the Commission may grant a limited term certificate for an appropriate period, such as 1 to 3 years. The Commission may also require periodic compliance reports, allowing the applicant to petition for permanent authority only at the end of the term. At such time, applicant would have to prove that it has provided satisfatory service at the proposed rate level. In other cases, when appropriate, the Commission may impose a rate holddown condition in the certificate. In some cases, other conditions may be appropriate. Applicants relying on rate evidence should be aware that the Commission may impose such restrictions upon a grant of authority and may also impose sanctions, such as revocation of the authority, upon violation of a restriction. Furthermore, whenever there is a restriction upon the authority, the issuance of the certificate may be postponed until the date the proposed rate actually becomes effective.

6. *Relief from rate commitments.* The Commission will allow relief, on a case-by-case basis, from the requirement that applicants fulfill their rate commitment. Rate relief may be expressly provided in the initial grant of authority, or may be permitted upon later petition by the carrier. The Commission may permit increases in the proposed rate, for example, to the extent of general rate increases or probable but unpredictable cost increases, such as substantial increases in the cost of fuel.

The Commission requests comments by any interested party on this announced policy and procedural safeguards.

Dated: August 30, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Murphy, Brown, Stafford, Gresham, and Clapp. Commissioner Stafford concurring in part and dissenting in part. Commissioner Murphy dissenting.

H.G. HOMME, Jr.,
Acting Secretary.

Commissioner Stafford, concurring in part, dissenting in part:

This policy statement recognizes a fact of life that the Commission heretofore has not really acknowledged. The truth is that a significant number of applications are based on the promise of lower rates.

If a shipper wishes to base its choice of a carrier solely or primarily on the prospect of lower rates and if the carrier is capable of operating at a lower rate than its competitors, then I agree that the rates issue deserves consideration.

I am concerned, however, that this new policy will be subject to abuse by carriers who promise lower rates but who will not abide by that promise for very long after they receive a certificate. The majority takes the position that applicants "should fill their rate commitment. If necessary, the Commission may impose an express requirement that they do so." I believe the policy statement should include more than a mere threat to impose conditions. I favor the required imposition of a meaningful holddown or other appropriate restriction against rate increases in any grant of authority that relies on a promise of lower rates. I suggest that an appropriate term should be at least 1 and possibly 3 years.

Consistent with the above, item 6 on sheet 7 should indicate that relief from rate commitments will be granted sparingly. The Commission should state that it will not look with favor upon such requests. It should also be made clear that repeated requests for relief may adversely affect a carrier's subsequent applications where it proposes a lower rate. If a carrier receives several grants of authority based on lower rates, and then seeks relief from our holddown conditions, it is an indication that rates should not have been the basis for a grant. In future application proceedings of that carrier, this issue may be raised and it should receive appropriate weight.

One final point worth noting about the notice is that the real beneficiaries of this policy statement will not be the small shippers who need rate relief the most. No matter what incentives the Commission may offer, the large shipper will always receive a better rate than the small shipper. I am concerned that this policy statement may widen the rate differences that already exist.

Commissioner Murphy, dissenting:

I believe that the Commission is embarking on a perilous journey which will encumber rather than ease the mounting caseload now troubling the Commission. Moreover, the majority's reliance upon lower rates as a basis for a claim of efficiency of operations is misplaced.

In the final analysis, rate matters should be excluded from applications for operating authority except in those limited circumstances where an embargo is present.

Accordingly, I respectfully dissent from the majority decision and rely upon my separate expression in this matter, served February 27, 1978. In any event, after the comments are received, I believe it is imperative that the Commission hold oral argument in this matter.

[FR Doc. 78-26445 Filed 9-18-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

CONTENTS

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[6320-01]

1

CIVIL AERONAUTICS BOARD.

[M-162 Amdt. 4; Sept. 13, 1978]

NOTICE OF DELETION OF ITEMS FROM THE SEPTEMBER 13, 1978, AGENDA

TIME AND DATE: 10 a.m., September 13, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 4. Docket 30332, IATA agreements proposing increases in North Atlantic cargo rates to compensate for cost increases (Memo No. 8176, BPDA, BIA).

10b. Dockets 33019, 33108, 33116, 33117, 33118, 33122, 33123, 33129, 33132, 31542, 33135, 33138, 33140, 33146, 33147, 33148, 33149, 33152, 33153, 33154, 33156, 33157, and 33178; Chicago-Midway Expanded Service Proceeding; (Memo No. 7909-F, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The staff needs additional time to review Item 4. Item 10b was deleted from the September 13, 1978 agenda in order to allow Member O'Melia additional time to review. Accordingly, the following Members have voted that agency business requires the deletion of Item 4 and 10b from the September 13, 1978 agenda and that no earlier announcement of these changes was possible:

Chairman Alfred E. Kahn
Member Richard J. O'Melia
Member Elizabeth E. Bailey

All amendments to previously announced agendas are publicly posted at the Board's offices, sent to the FEDERAL REGISTER for publication, and mailed to parties to docketed cases affected by the change. We regret any inconvenience that may be caused by these changes or the delayed receipt of our notices.

[S-1890-78 Filed 9-15-78; 10:31 am]

[6320-01]

2

[M-164; Sept. 13, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m.—September 20, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Docket 24048, Application of Braniff Airways, Inc., and Braniff International Corp. for approval of interaffiliate transfer of A-B Aircraft, Inc. (Memo 7835-A, BPDA, OGC, BAS).

3. Docket 31633, to amend Allegheny's certificate by removing its one-step restriction between Cleveland and Rochester (Memo 7759-B, BPDA, OGC).

4. Docket 32994, Allegheny's Exemption, Charleston, W. Va.-Pittsburgh, Pa. (Memo 8180, BPDA).

5. Docket 32873, American's Application and motion for Hearing on Reno-Chicago authority (Memo 8179, BPDA).

6. Letter to Congressman Jerome A. Ambro in reply to his inquiry on J.R. 13181, a bill to reinstate Board jurisdiction over the reasonableness of air cargo carriers' liability rules and practices (Memo 8182, BPDA).

7. Docket 30332, IATA agreements proposing varying increases in North Atlantic cargo rates through September 30, 1979 to compensate for cost increases. Pan American and TWA support the agreements in their entirety while Seaboard supports the increases with some exceptions. Both the Air Freight Forwarders Association and the Ad Hoc Committee for the Development of Air Freight oppose some of the structural aspects of the agreements (Memo 8176, BPDA, BIA).

8. Dockets 28337, 28999, and 32746, applications of Braniff, Allegheny, and American to serve various U.S.-Canada routes (Memo 8178, BIA, OGC, BALJ).

9. Docket 33019, 33108, 33116, 33117, 33118, 33122, 33123, 33129, 33132, 31542, 33135, 33138, 33140, 33146, 33147, 33148, 33149, 33152, 33153, 33154, 33156, 33157, and 33178, *Chicago-Midway Expanded Service Proceeding* (Memo 7909-F, OGC).

10. Docket 28903, *Enforcement Proceeding against Alaska Airlines, Inc., Gerald L. Johnson and C. James England.* BOE's motion to dismiss this proceeding against the only remaining respondent, C. James England, on the grounds that recent liberalization of the Board's charter regulations has greatly reduced the incentive for the type of single entity charter violations that are the subject of this proceeding (Memo No. 6256-A, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

[S-1891-78 Filed 9-15-78; 10:31 am]

[6351-01]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., September 22, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 8th Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1897-78 Filed 9-15-78; 3:30 pm]

[1505-01]

4

CONSUMER PRODUCT SAFETY COMMISSION.

In Sunshine Act Meeting document S-1799-78 published at page 40099 in the issue for Friday, September 8, 1978, and announcing a meeting for September 13, 1978, in the middle column, item 3 under the agenda should read as follows:

"3. *Final rule to exempt certain ink cartridges from labeling requirements.* In response to a petition from the Parker Pen Co. (HP77-4), the Commission, in November 1977 proposed to exempt certain rigid or semirigid ink cartridges from labeling requirements of the Federal Hazardous Substances Act. At this meeting, the Commission will

discuss this exemption. (Closed—exemption 9, possible frustration of agency action.)

[6730-01]

5

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 14, 1978; 43 FR 41160.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., September 20, 1978.

CHANGES IN THE MEETING: Addition of the following items to the Open Session.

2. Concordia International Forwarding Corp.—Application for independent ocean freight forwarder license.
3. Conditions unfavorable to shipping in the United States/Ecuador trade—Section 19 Merchant Marine Act, 1920.

ADDITIONAL CHANGES IN THE MEETING: Time and Date of Meeting changed from September 20, 1978—10 a.m. to September 21, 1978—2 p.m.

[S-1896-78 Filed 9-15-78; 1:38 pm]

[6210-01]

6

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Friday, September 22, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20331.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchases, under competitve bidding, of computer equipment within the Federal Reserve System.
2. Proposed acquisition of real property by a Federal Reserve Bank.
3. Proposed rescission of a Board policy prohibiting payment of extra compensation to Reserve Bank employees.
4. Proposed salary structure adjustments at several Federal Reserve Banks.
5. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
6. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board: 202-452-3204.

Dated: September 15, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[S-1893-78 Filed 9-15-78; 10:31 am]

[7550-01]

7

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, October 4. 1978.

PLACE: Board hearing room, 8th floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the month of September 1978.
2. Amendment of NMB Rules to delete the note to section 1206.4(b), 29 CFR 1206.4(b), currently excepting unrepresented crafts or classes from the time limits on applications contained in section 1206.4(b).
3. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary; 202-523-5920.

(Date of Notice: September 13, 1978).

[S-1895-78 Filed 9-15-78; 11:46 am]

[7590-01]

8

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of September 11 (changes) and week of September 18.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONTINUED:

Thursday, September 14 (Additional Item)

2:00 p.m.—Review of ALAB-498 (Seabrook). (Approx. 45 min.) (Closed—Tentative.)

Tuesday, September 19

2:30 p.m.—Discussion of Personnel Matters (Approx. 1 hr.) (Closed—Exemption 6.)

Wednesday, September 20

9:30 a.m.—1. Briefing on Reactor Licensing Schedules (Approx. 1 hr.) (Public Meeting.)
2. Affirmation Items (10 min.) (Public Meeting.) a. Alternatives in Burial of Low Level Wastes. b. Improving Nuclear Power Plant Licensing.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

SEPTEMBER 13, 1978.

[S-1886-78 Filed 9-14-78; 3:02 p.m.]

[7600-01]

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m., September 28, 1978.

PLACE: Room 101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicated process.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Lottie Richardson, 202-634-4015.

Date: September 15, 1978.

[S-1894-78 Filed 9-15-78; 11:46 am]

[7910-01]

10

RENEGOTIATION BOARD.

DATE AND TIME: Thursday, September 28, 1978; 10 a.m.

PLACE: Conference room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 through 3 are open to public observation. Matters 4 and 5 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting held September 19, 1978, and other Board meeting, if any.
2. Recommended determination of excessive profits and clearance: ABC Management Services, Inc., fiscal years ended June 30, 1974 and 1975.
3. Recommended determination of excessive profits: DeLong Corp., fiscal year ended December 31, 1969.
4. Approval of agenda for meeting to be held October 10, 1978.
5. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20447, 202-254-8277.

Dated: September 15, 1978.

GOODWIN CHASE,
Chairman.

[S-1898-78 Filed 9-15-78; 3:30 pm]

[8240-01]

11

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: September 21, 1978, 9 a.m.

PLACE: Caucus Room, Loew's l'Enfant Plaza Hotel, 480 l'Enfant Plaza East SW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS OR ITS EXECUTIVE COMMITTEE

Portions open to the public (9 a.m.):

1. Briefing on administrative matters.
2. Briefing on Regional Rail Reorganization Act of 1973 and Railroad Revitalization and Regulatory Reform Act of 1976.
3. Discussion of role of association.

Portions closed to the public (10 a.m.):

4. Review of Conrail proprietary and financial information for monitoring and investment purposes.
5. Consideration of internal personnel matters.
6. Litigation report.

CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow, 202-426-4250.

[S-1892-78 Filed 9-15-78; 10:31 am]

Federal Register

TUESDAY, SEPTEMBER 19, 1978
PART II

DEPARTMENT OF LABOR

COMMUNITY SERVICES ADMINISTRATION

■

PRIVACY ACT OF 1974

Annual Publication

[4510-23]

DEPARTMENT OF LABOR

Office of the Secretary

PRIVACY ACT ISSUANCES

Notices of Incorporation by Reference

Agency: Office of the Secretary

Action: Incorporation by Reference of Privacy Act Issuances

Summary: Federal agencies are required by the Privacy Act of 1974 to give annual notice of certain records they maintain. The notices published last year were compiled by the Office of the Federal Register into "Privacy Act Issuances—1977 Compilation." The purpose of this document is to incorporate by reference the notices that appear in "Privacy Act Issuances—1977 Compilation" and to publish in full the systems that this agency has amended since publication of the 1977 Compilation; and to add systems of records previously published by the Department of the Interior which have been transferred to the Department of Labor under the Mine Safety and Health Amendments Act, 1977, Public Law 95-164.

For further information contact: Sofia P. Petters, 523-8065.

Pursuant to 5 U.S.C. 552 (a)(e)(4), section 3 of the Privacy Act of 1974, the Department of Labor hereby publishes notice of its systems of records currently maintained pursuant to the Privacy Act of 1974. The systems were previously published at 42 FR 49654 (September 27, 1977); 43 FR 25206 (June 9, 1978); and 43 FR 29042 (July 5, 1978); and in Volume II of the 1977 Privacy Act Issuances Compilation. This notice reflects an incorporation by reference of systems of records published in the 1977 Privacy Act Issuances Compilation, two systems which were not published in full in the Compilation, amendments to existing systems and two new systems published since the 1977 Compilation. This notice also includes notice of systems of records transferred from the Department of the Interior to the Department of Labor under mine safety and health program.

Since publication of the 1977 annual notice of systems of records at 43 FR 49654 (September 27, 1977), the Department of Labor has published at 43 FR 25206 (June 9, 1978) two new systems of records; DOL/ESA-23, Office of Workers' Compensation Programs Investigation Files, and DOL/ESA-24, Office of Workers' Compensation Programs, Longshoremen's and Harbor Workers' Compensation Act Special Fund System. DOL/ESA-23 contains investigatory records compiled by the Division of Investigation, a new devision within the Office of Workers' Compensation Programs. DOL/ESA-24 is a system, which was segregated from the DOL/ESA-15 and established as a new system because of a change in location. DOL/ESA-15 has been amended to reflect this change.

DOL/OSHA-1, Discrimination Complaint File, was amended at 43 FR 29042 (July 5, 1978) to exempt this system of records under paragraph (k)(2) of the Privacy Act as investigatory material compiled for civil law enforcement purposes.

The Department of Labor is also republishing two systems of records: DOL/ETA-4, Bureau of Apprenticeship and Training National Industry and DOL/ETA-5, ESARS 2, which were indexed in the 1977 Compilation, but were not published in full in the body of the text.

The Department of Labor also publishes notice of 15 systems of records which have been transferred from the Department of the Interior to the Department of Labor under the authority of the Federal Coal Mine Health and Safety Act as amended by the Federal Mine Safety and Health Amendments Act of 1977, Public Law 95-164. The systems of records published by the Department of the Interior on April 11, 1977 and included in Volume VI of the 1977 Privacy Act Compilation are published in full with charges necessitated by the transfer of the mine safety and health program from the Department of the Interior to the Department of Labor.

The Department of the Interior published 16 systems of records for the mine safety program. One system of records, Interior/EMS-11, National Mine Health and Safety Academy Records, is not being published by the Department of Labor as that function remains with the Department of the Interior.

The changes in the notice of systems of records and the new systems of records are as follows:

DOL/ESA-15: Office of Workers' Compensation Programs, Longshoremen and Harbor Workers' Compensation Case File—amended.

DOL/ESA-23: Office of Workers' Compensation Act Investigation Files—new system.

DOL/ESA-24: Office of Workers' Compensation Act Special Fund System—new system, segregated from ESA-15.

DOL/OSHA-1: Discrimination Complaint File—amended.

DOL/ETA-4: Bureau of Apprenticeship and Training, National Industry—republished.

DOL/ETA-5: ESARS 2—republished.

DOL/MSHA-1: Coal and Metal and Nonmetal Mine Accident and Injury—new system.

DOL/MSHA-2: Identification cards—new system.

DOL/MSHA-3: Metal and Nonmetal Mine Safety and Health Management Information—new system.

DOL/MSHA-4: Employee Conduct Investigations—new system.

DOL/MSHA-5: Payroll Records—new system.

DOL/MSHA-6: Travel—new system.

DOL/MSHA-7: Travel Advance File—new system.

DOL/MSHA-8: Accident and Injury Records—new system.

DOL/MSHA-9: Clearance Records—new system.

DOL/MSHA-10: Coal Mine Health and Safety Special Investigations—new system.

DOL/MSHA-12: Property Control—new system.

DOL/MSHA-13: Coal Mine Respirable Dust Program—new system.

DOL/MSHA-14: Coal Mine Noise Level Program—new system.

DOL/MSHA-15: Health and Safety Training Records Including Qualification and Certification Data—new system.

DOL/MSHA-16: Employee Locator System—new system.

This notice fulfills the annual notice requirements of the Privacy Act for 1978.

Dated: August 29, 1978.

Ray Marshall,
Secretary of Labor.

APPROVAL OF DIRECTOR

The notices of systems of records of this agency which appear in "Privacy Act Issuances—1977 Compilation" are incorporated by reference. The Director of the Office of the Federal Register granted approval to incorporate by reference these Privacy Act issuances on July 13, 1978. Published below is the full text of systems of records that this agency has amended since publication of the 1977 Compilation.

DOL/ESA-15

System name: Office of Workers' Compensation Programs, Longshoremen's and Harbor Workers' Compensation Act Case Files.

System location: Most files are located in District Offices but cases involving special issues may be in the National Office.

Categories of individuals covered by the system: The system maintains records of injury, occupational disease and death of employees working in private industry who are covered by the provisions of the Longshoremen's and Harbor Workers' Compensation Act and related acts.

Categories of records in the system: Records include: reports of injury by employees and employers, authorization for medical care; medical reports; medical and transportation bills; formal orders for or against payment of compensation; vocational evaluations, rehabilitation plans and awards and vocational progress reports; vital statistics such as birth, marriage, death certificates; enrollment and attendance records at educational institutions.

Authority for maintenance of the system: 33 U.S.C. 901 et. seq. (20 CFR 701 et. seq.) 36 U.S.C. 501 et. seq., 42 U.S.C. 1951 et. seq., 43 U.S.C. 1331 et. seq., 5 U.S.C. 8171 et. seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure to the employer at the time of the injury or the onset of the occupational illness and to any party providing the employer with workers' compensation insurance coverage; doctors and medical service providers for the purpose of obtaining medical evaluations, physical rehabilitation or other services; public or private agencies to whom the injured worker has been referred for vocational rehabilitation services; contractors providing automated data processing services for the Department of Labor; and labor unions and other voluntary associations of which the claimant is a member acting on behalf of the individual member.

Storage: This information is maintained as written records and documents in letter size manual files stored in 4 and 5 drawer file cabinets, located in the several District Offices.

Notification procedure: Contact System Manager.

Record access procedures: Any individual seeking information about a case in which he/she is a party of interest may write or telephone the OWCP District Office and arrangement will be made

to provide review of the file, consonant with restrictions defined as a Routine Use.

Contesting record procedures: Contact Systems Manager.

Record source categories: The system obtains information from injured employees, their qualified dependents, employers, insurance carriers, physicians, medical facilities, educational institutions, attorneys, State and Federal vocational rehabilitation agencies and Members of Congress.

DOL/ESA-23

System name: Office of Workers' Compensation Programs Investigation Files

System location: U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP), Division of Investigation, Washington, D.C. 20210, and ESA Regional Offices.

Categories of individuals covered by the system: Individuals filing claims for workers' compensation benefits under (1) the Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 et. seq.) (except 8149 as it pertains to the Employees' Compensation Appeals Board) (2) the Longshoremen's and Harbor Workers' Compensation Act as amended and extended (33 U.S.C. 901 et. seq.) (except 33 U.S.C. 921(b) as it applies to the Benefits Review Board) and (3) Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, 30 U.S.C. 901 et. seq.; individuals providing medical and other services to OWCP; employees of insurance companies and of medical and other services providers to OWCP; and other persons suspected of violations of law under the above Acts and related civil and criminal provisions as well as respondents, witnesses and other individuals involved in investigations and enforcement actions instituted by the Department of Labor.

Categories of records in the system: The system contains information gathered by OWCP in connection with investigations by it into possible violations of Federal law, whether civil or criminal including (1) the Federal Employees' Compensation Act and related Acts, (2) the Longshoremen's and Harbor Workers' Compensation Act and related Acts, and (3) Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, 30 U.S.C. 901 et. seq. Such information may be derived from materials filed with the Department of Labor, other Federal, State and local departments and agencies, court records, medical records, insurance records, records of employers, articles from publications published financial data, corporate information, bank information, telephone data, statements of witnesses, information received from Federal, State, local and foreign regulatory and law enforcement organizations, and from other sources. This record also contains the work product of the Department of Labor, and other government personnel and consultants involved in the investigations.

Authority for maintenance of the system: 5 U.S.C. 8101 et seq. 20 CFR 1.1 et seq.; 33 U.S.C. 901 et seq., 20 CFR 701 et seq.; 36 U.S.C. 501 et seq., 42 U.S.C. 1951 et seq.; 43 U.S.C. 1331 et seq.; 5 U.S.C. 8171 et seq.; 30 U.S.C. 901 et seq.; 20 CFR 715 et seq.; 20 CFR 720.1 et seq.; 20 CFR 725.1 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Records are made available to other Federal agencies and State and local agencies conducting similar or related investigations and to the Justice Department in that agency's determination regarding potential litigation and during the course of actual litigation. Records may be disclosed to contractors providing automated data processing services for the Department of Labor. Records may also be disclosed in any proceeding where the Federal Employees' Compensation Act and related Acts, Longshoremen's and Harbor Workers' Compensation Act and related Acts, Title IV Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972 is in issue or in which the Secretary of Labor, any past or present Federal employee or consultant directly or indirectly involved in investigations or other enforcement activities under the above Acts, is a party or otherwise involved in an official capacity.

Retrievability: Records are indexed by name.

Safeguards: Access to and use of these records are limited to those persons whose official duties require such access.

Retention and disposal: To be determined.

System manager(s) and address: Associate Director, Division of Investigation, Office of Workers' Compensation Programs, 200 Constitution Avenue NW., Washington, D.C. 20210.

Notification procedure: Contact Systems Manager.

Record access procedures: Contact Systems Manager.

Contesting record procedures: Contact Systems Manager.

Record source categories: Record from OWCP claim and payment files (DOL/ESA-6, 7, 8, 11, 13, 15, and 24) and from employees, insurers, service providers and parties interviewed during the course of an investigation.

Systems exempted from certain provisions of the act: (a) Criminal law enforcement. In accordance with paragraph 3(j)(2) of the Privacy Act, information maintained in investigation files in the Division of Investigation of the Office of Workers' Compensation Programs of the Employment Standards Administration is exempt from all provisions contained in 5 U.S.C. 552a except those requirements set forth in paragraphs (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11) and paragraph (i) of the Act. The disclosure of information contained in the criminal investigative files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of the Division's investigations. Knowledge of such investigations could enable subjects to take such action as is necessary to prevent detection of criminal activities, conceal evidence, or to escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their respective families, and could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained would impede significantly the effectiveness of the division's investigatory activities, and in addition, may often preclude the apprehension and successful prosecution of persons engaged in fraud of the Federal workers' compensation programs. (b) Other law enforcement. In accordance with paragraph 3(k)(2) of the Privacy Act, investigatory material compiled for law enforcement purposes other than material declared exempt under paragraph 3(j)(2) of the Act, which is maintained in investigation files of the Division of Investigation of the Office of Workers' Compensation Programs of the Employment Standards Administration is exempt from paragraphs (c)(3), (d), (e)(4), (G), (H), and (I), and paragraph (f) of 5 U.S.C. 552a. The disclosure of information contained in civil investigative files, including the names of persons and agencies to whom the information has been transmitted, would substantially compromise the effectiveness of the Division's investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to informants, witnesses, and their respective families, and, in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained would also impede significantly the effectiveness of the Division's investigatory activities.

DOL/ESA-24

System name: Office of Workers' Compensation Programs, Longshoremen's and Harbor Workers' Compensation Act Special Fund System

System location: Division of Longshore and Harbor Workers' Compensation, Room C4315, 200 Constitution Avenue NW., Washington, D.C. 20210.

Categories of individuals covered by the system: Persons receiving compensation and related benefits under the Longshoremen's and Harbor Workers' Compensation Act.

Categories of records in the system: Bills, vouchers, and records of payment for compensation and related benefits under the Longshoremen's and Harbor Workers' Compensation Act.

Authority for maintenance of the system: 33 U.S.C. 901 et seq. (20 CFR 701 et seq.), 36 U.S.C. 501 et seq., 42 U.S.C. 1951 et seq., 43 U.S.C. 1331 et seq.; 5 U.S.C. 8171 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure of payment information to insurance carriers or self-insurers under the Longshoremen's and Harbor Workers' Compensation Act in instances of verification of payment.

Storage: The information is maintained as written records and documents in letter size manual files stored in four and five drawer cabinets.

Retrievability: By name of payee.

Safeguards: Files are locked at night and maintained during working hours under the constant supervision of OWCP personnel.

Retention and disposal: To be determined.

System manager(s) and address: Associate Director, OWCP, Division of Longshore and Harbor Workers Compensation, U.S. Department of Labor, 200 Constitution Avenue NW., Room C4315, Washington, D.C. 20210.

Notification procedure: Contact System Manager.

Record access procedures: Contact System Manager.

Contesting record procedures: Contact System Manager.

Record source categories: Insurers and self-insurers under the Longshoremen's and Habor Workers' Compensation Act and parties providing covered benefits and service to approved claimants under the Act.

DOL/OSHA-1

System name: Discrimination Complaint File.

System location: For Standard Federal Region I through V, at the following address; Operations Review Office, U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 1110A, Charles Center, 31 Hopkins Plaza, Baltimore, Md. 21201, for Standard Region VI through X, at the following address: Operations Review Office, U.S. Department of Labor, Occupational Safety and Health Administration, Room 3100, Federal Office Building, 909 First Avenue, Seattle, Wash. 93174.

Categories of individuals covered by the system: Individuals who have filed complaints pursuant to section 11(c) of the Occupational Safety and Health Act.

Categories of records in the system: Case files compiled in connection with investigations of discrimination complaints.

Authority for maintenance of the system: Section 11(c) of the Occupational Safety and Health Act (Pub. L. 91-596).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Storage: Manual files.

Retrievability: By complainant's name or case identification number.

Safeguards: Locked file cabinets.

Retention and disposal: Retained for 3 years after completion of investigation then forwarded to GSA Records Center.

System manager(s) and address: Operations Review Officer at address where system is located.

Notification procedure: To Systems Managers at above address.

Record access procedures: As above.

Contesting record procedures: As above.

Record source categories: Complaints filed by individuals alleging discrimination and information compiled in connection with investigations of alleged acts of discrimination.

Systems exempted from certain provisions of the act: In accordance with paragraph (k)(2) of the Privacy Act, investigatory material compiled for law enforcement purposes which is maintained in the Discrimination Complaint File is exempt from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a.

Disclosure of information contained in this file could threaten investigators, witnesses, informants and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act. In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment of dismissal from employment of those involved, and would discourage those contacted in future investigations from cooperating with investigators.

Two systems of records were not published in full in the 1977 Compilations. These systems were included in the DOL index. The full text of the systems is published below.

DOL/ETA—4

System name: Bureau of Apprenticeship and Training. National Industry.

System location: Bureau of Apprenticeship and Training. Room 5414. Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213.

Categories of individuals covered by the system: Apprentices.

Categories of records in the system: Program Sponsor.

Authority for maintenance of the system: Public Law 308 (Fitzgerald Act)

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None

Storage: Manual Files—programs and apprentice registration cards for apprentices.

Retrievability: Program sponsor name, apprentice's name and apprenticeable occupation.

Safeguards: Standard file cabinets with locks.

Retention and disposal: Retain three years and commit to Archives.

System manager(s) and address: Director, Office of National Industry Promotion, Room 5414, Patrick Henry Building, 601 D Street NW., Washington, D.C.

Notification procedure: As above.

Record access procedures: As above.

Contesting record procedures: As above.

Record source categories: Program Sponsor.

DOL/ETA—5

System name: ESARS 2 Sample File.

System location: Room 2821, GAO Building, 441 G Street NW., Washington, D.C.; Room 4410 Patrick Henry Building, 601 D Street NW., Washington, D.C.

Categories of individuals covered by the system: Employment Service Applicants.

Categories of records in the system: Characteristics of individual such as age, sex, race and ES Services provided to him.

Authority for maintenance of the system: 29 U.S.C. 49, et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Storage: Magnetic Tape.

Retrievability: By region, State, SSN.

Safeguards: Routine computer precautions limiting access to authorized expenditure codes.

Retention and disposal: 5 years. Destroyed by scratching tape.

System manager(s) and address: Chief, Division of ADP Systems, Patrick Henry Bldg., Room 4410, 601 D Street, NW., Washington, D.C. 20213.

Notification procedure: As above.

Record access procedures: As above.

Contesting record procedures: As above.

Record source categories: All records came from the State Employment Service Offices in the 50 States, P.R. and D.C.

The Federal Coal Mine Health and Safety Act, 30 U.S.C. 801 et seq., was amended by the Federal Mine Safety and Health Amendments Act of 1977, Public Law 95-164. Under these amendments certain functions formerly under the responsibility of the Department of the Interior were transferred to the Department of Labor. These functions are now being carried out by the Mine Safety and Health Administration, MSHA, of the Department of Labor. The Department of Labor now publishes those systems of records which were transferred to the Department of Labor from the Department of the Interior, with such amendments as are necessary to reflect their transfer. All systems of records published as Interior/EMS by the Department of the Interior on April 11, 1977, and in Volume VI of the 1977 Privacy Act compilation are hereby published by the Department of the Interior except for Interior/EMS-11, National Mine Health and Safety Academy Records, which will continue to be published by the Department of the Interior.

DOL/MSHA—1

System name: Coal and Metal and Nonmetal Mine Accident and Injury.

System location: Health and Safety Analysis Center, Technical Support Center, 730 Simms Street, Lakewood, Colo. 80215.

Categories of individuals covered by the system: Individual workers in the coal and metal and nonmetal mining industries.

Categories of records in the system: These records contain accident, injury, fatality, and occupational illness data which includes the individual miner's name, social security number, date and time of accident or injury, place of accident or injury, man-hours worked, name of mine, and mine identification number and type and cause of accident, injury or illness.

Authority for maintenance of the system: Section 103 of Public Law 91-173 as amended by Public Law 95-164.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are (a) to determine probable cause of accidents, injuries, and illnesses and (b) to provide a statistical analytic data base for allocation of MSHA and other resources to reduce occupational injuries and illnesses. Disclosures outside the Department of Labor may be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Manual—in file folders; computer—disk pack.

Retrievability: indexed by mine identification number, name of mine, individual's name, and social security number. Retrieved by manual search, frequently used information maintained on computer printouts.

Safeguards: Computer—in accordance with the National Bureau of Standards publication "Computer Security Guidelines for Implementing the Privacy Act of 1974". Manual—file cabinets. During working hours records are accessible only to authorized personnel.

Retention and disposal: Source document are retained for up to 3 years and then transferred to Federal Records Center. Tapes are retained indefinitely for historical purposes. Microfilm records are held for 5 years and then disposed of.

System manager(s) and address: Chief, Health and Safety Analysis Center, 730 Simms Street, Lakewood, Colo. 80215.

Notification procedure: Inquiries regarding the existence of records should be addressed to the system manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required.

Record access procedures: To see your records write the systems manager or the offices cited under "Records Location." Describe as specifically as possible the records sought.

Contesting record procedures: To request corrections or the removal of material from your files, write the systems manager.

Record source categories: Information in these records is obtained from accident, injury, illness and fatality reports submitted by mine operators.

DOL/MSHA—2

System name: Identification Cards

System location: Mine Safety and Health Adminstration, Branch of Records Management, 4015 Wilson Blvd., Arlington, Va. 22203.

Categories of individuals covered by the system: Individuals who require identification for the purpose of carrying out their activities work. Individuals who have been appointed by the Secretary as Duly Authorized Representatives (DAR) to administer the provisions of Public Law 91-173 as amended by Public Law 95-164.

Categories of records in the system: Contain individual's name; some DAR records contain a statement of an individual's qualifications (e.g., education, work experience, training, etc.) as a justification for being appointed as a DAR.

Authority for maintenance of the system: Employee identification cards—5 U.S.C. 3101. DAR identification cards—Section 505 of Public Law 91-173 as amended by Public Law 95-164.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) issuance of identification cards; (2) transfer to the U.S. Department of Justice in the event of litigation involving the records or the subject matter of these records; (3) transfer, in the event there is an indicated violation or potential violation of a statute, regulation, rule, order, or license, whether civil, criminal or regulatory in nature, to the appropriate agencies, whether Federal, State, local, or foreign, charged with the responsibility of investigaion or prosecuting such violation or charged with enforcing or implementing the statute, regulation, rule, order, or license violated or potentially violated; (4) disclosure to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses. If necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit; (5) disclosure to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Continuous listing maintained in manual form on 8 x 10.5 inch paper filed in manila folders, and stored in file cabinets.

Retrievability: Indexed by name and number issued.

Safeguards: Records are kept in a locked file cabinet and only those employees who work with the records have access to them.

Retention and disposal: Records are maintained until a notice of change or employment is terminated and destroyed when no longer needed.

System manager(s) and address: Records Management Officer, Division of Management Services, MSHA, 4015 Wilson Blvd., Arlington, Va. 22203.

Notification procedure: Inquiries regarding records in this system should be addressed to the system manager. Such requests must be submitted in writing and signed by the requester.

Record access procedures: A request for access may be addressed to the system manager. The request must be in writing and be signed by the requester.

Contesting record procedures: A petition for amendment shall be addressed to the system manager.

Record source categories: Information is obtained from individuals and personnel records as needed.

DOL/MSHA—3

System name: Metal and Nonmetal Mine Safety and Health Management Information

System location: (1) Office of the Administrator for Metal and Nonmetal Mine Safety and Health, U.S. Department of Labor, 4015 Wilson Blvd., Arlington, Va. 22203. (2) Substantially all district and subdistrict offices (See Appendix for addresses.)

Categories of individuals covered by the system: Individual metal and nonmetal miners who are covered by the Federal Mine Safety and Health Amendments Act of 1977, Public Law 91-173 as amended by Public Law 95-164; MSHA personnel.

Categories of records in the system: Contains records on metal and nonmetal mine safety and health activities which include annual manpower and activity plans, mine and mill locations, metal and nonmetal mine inspection personnel time and activity, inspections, citations, and orders against operators, personal exposure data on personnel exposure of miners and MSHA Personnel to radiation, dust, noise and other contaminants, and comprehensive health surveys on individual operations.

Authority for maintenance of the system: Public Law 91-173 as amended by Public Law 95-164; 29 U.S.C. 668.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are (a) to determine the workload work scheduling and performance of mine inspection personnel; (b) to maintain records on violations of health and safety standards and regulations; (c) to determine contaminant exposure level; (d) employment data relative to metal and nonmetal mine workers, e.g., number of workers, etc. Disclosures outside the Department of Labor may be made (1) to the National Institute of Occupational Safety and Health and the Environmental Protection Agency information resulting from special health studies; (2) to provide State agencies applicable inspection reports, surveys on personnel exposure and special health studies; (3) to furnish unions and company officials inspection reports containing exposure data pertaining to members and employees, respectively; (4) to the U.S. Department of Justice when related to litigation or anticipated litigation; (5) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rules, regulation, order or license; (6) from the

record of an individual in response to an inquiry from a congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Computer—information from source documents to punch cards to disk storage for processing, final storage on magnetic tape. Manual—8 x 10.5 inch report forms in standard file cabinets.

Retrievability: Computerized and manual records are indexed by mine identification number for operators, by authorized representative number for individuals.

Safeguards: Computer—In accordance with the National Bureau of Standards publication, "Computer Security Guidelines for Implementing the Privacy Act of 1974." Manual—locked file cabinets. During working hours records are accessible only to authorized personnel.

Retention and disposal: Computer—tapes are retained indefinitely. Punch cards and source documents are destroyed after 90 days. Manual—retained indefinitely.

System manager(s) and address: Thomas J. Shepich, Metal and Nonmetal Mine Safety and Health, 4015 Wilson Blvd., Arlington, Va. 22203.

Notification procedure: To determine whether the records are maintained on you in this system, write to the system manager, or to the offices cited under Records Location.

Record access procedures: To see your records write the system manager or the office cited under Records Location. Describe as specifically as possible the records sought.

Contesting record procedures: To request corrections or the removal of material from your files, write the system manager.

Record source categories: MSHA inspection personnel and individual mine operators submit reports and information in accordance with prescribed procedures.

DOL/MSHA—4

System name: Employee Conduct Investigations

System location: Mine Safety and Health Administration, Office of Internal Affairs, U.S. Department of Labor, 4015 Wilson Blvd., Arlington, Va. 22203.

Categories of individuals covered by the system: Any MSHA employee against whom any allegation of misconduct, illegal acts, conflict of interest, etc. has been made.

Categories of records in the system: Contains the name, organization, allegation and other pertinent information relating to the individual involved. It also contains the investigative report associated with the case including interviews and other confidential data gathered by investigators.

Authority for maintenance of the system: 5U.S.C. 301, 7301, Executive Order 11222.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary use of the records is to determine facts and circumstances relative to allegations. Disclosures outside the Department of Labor may be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigations; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; and (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Manual—in manila file folders

Retrievability: Filed by name in alphabetical order. Retrieved by manual search.

Safeguards: Stored in GSA approved 3-way combination safe.

Retention and disposal: Reports of completed investigations are disposed of after 30 years. Matters not subjected to full field investigations are disposed of after 15 years. Destruction is by shredding or burning under supervision.

System manager(s) and address: Chief, Office of Internal Affairs, MSHA, 4015 Wilson Blvd., Arlington, Va. 22203.

Systems exempted from certain provisions of the act: Under the specific exemption authority provided by 5 U.S.C. 552a(k)(2), exempting this system from the following provisions of the Privacy Act; 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) and the portions of 29 CFR 70a which implement these provisions.

DOL/MSHA—5

System name: Payroll Records

System location: Mine Safety and Health Administration, Branch of Finance, P.O. Box 25367, 730 Simms Street, Lakewood, Colo. 80215.

Categories of individuals covered by the system: Current MSHA employees and those formerly employed by MSHA within the last 3 years.

Categories of records in the system: A variety of documents which set forth or effect an employees annual wage rate, leave, biweekly earnings, payroll deductions, and disposition of earnings. Hard copy records consist of folders of action type documents for each employee. These records are source documents for data records on computer tape for payroll purposes.

Authority for maintenance of the system: 5 U.S.C. 5101, et seq., Budget and Accounting Procedures Act of 1950, as amended, 31 U.S.C. 66a.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are (a) to provide information and accounting records regarding employees pay and leave for the automated payroll data file; (b) to inform each MSHA office of the composition of the labor cost changes by reporting total payroll changes for each individual made to various cost accounts within the finance system. This reporting is made every 2 weeks on a regular payroll cycle. Disclosures outside the Department of Labor may be made (1) to provide States with pay data relative to plans for unemployment compensation; (2) to the Department of the Treasury for preparation of (a) payroll checks and (b) payroll deduction and other checks to Federal, State, and local government agencies, non-governmental organizations and individuals; (3) to the Internal Revenue Service, the Social Security Administration and to State, commonwealth, territorial and local governments for tax purposes; (4) to the Civil Service Commission in connection with the Civil Service Retirement System; (5) Federal Employees Government Life Insurance, and Health Benefits Program; (6) to carriers of health insurance benefits; (7) to labor unions for dues; (8) to charitable institutions for charity contributions; (9) to courts and court representatives requesting earnings and deductions information for alimony and child support under Public Law 93-579; (10) to another Federal agency to which employee had transferred; (11) to provide SSN for use in identifying MSHA employee travel advance accounts which are maintained in travel advance file; (12) to the U.S. Department of Justice when related to litigation or anticipated litigation; (13) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (14) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (15) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (16) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of security clearance, contract, license, grant or other benefit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained manually in file folders, and automated on computer magnetic tape, microfiche, microfilm, and punched cards.

Retrievability: File folders are maintained by name and all others by social security number.

Safeguards: Files are kept in locked metal filing cabinets which are posted with the appropriate Privacy Act warning. During working hours only authorized personnel have access to the files. Computer: Safeguards as described in the National Bureau of Standards booklet, "Computer Security Guidelines for Implementing the Privacy Act of 1974," and procedures developed by MSHA under GSA Circular E-34.

Retention and disposal: Punched cards are destroyed after 1 year. Magnetic tapes are erased and reused in accordance with schedule of retention agreed to by the Chief, Division of Budget and Finance, and the Chief, Division of Automatic Data Processing, MSHA, and

the Bureau of Mines, ADP. All other official payroll data are disposed of in accordance with General Records Schedule No. 2, FPMR 101-11.4.

System manager(s) and address: Chief, Branch of Finance, MSHA. P.O. Box 25367, 730 Simms Street, Lakewood, Colo. 80215.

Notification procedure: Inquiries regarding records in this system should be addressed to the system manager. Such request must be submitted in writing and signed by the requester.

Record access procedures: To see your records write the systems manager or the office cited under System Location. Describe as specifically as possible the records sought.

Contesting record procedures: To request corrections or the removal of material from your files, write the system manager.

Record source categories: Information in this system of records comes from individual to whom it applies or is derived from information he supplied. Payroll leave regulations are all established by public law and the effect upon the individual is in accordance with such public laws and regulations. Generally, most payroll source data are echo records of official personnel actions.

DOL/MSHA—6

System name: Travel

System location: (1) Mine Safety and Health Administration, Branch of Finance, P.O. Box 25367, 730 Simms Street, Lakewood, Colo. 80215. Input documents supplied by all facilities of the Mine Safety and Health Administration.

Categories of individuals covered by the system: All persons traveling for or in behalf of MSHA on official business.

Categories of records in the system: Voucher file consists of copies of paid travel vouchers, SF-1012, which serve to reimburse travelers for expenses incurred in connection with official travel and travel authorizations, MSHA Form 1000-3, which authorizes employee to incur expenses. Travelers home address and SSN are likely to be found on these two forms.

Authority for maintenance of the system: 5 U.S.C. 5701, et seq., GSA regulations, FPMR 101-7 dated May 1973, as amended.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are (a) as backup entry data for obligation and disbursements in the automated finance system of MSHA; (b) as an audit file for researching historical data; (c) for travel cost information which is reported to each MSHA office as part of the detailed composition of monthly expense reports for cost accounts within the finance system. Only data pertinent to individual MSHA offices are available to that office. Disclosures outside the Department of Labor may be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statue, regulation, rule, order or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statue, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, contract, license, grant, or other benefits; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant, or other benefit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders in steel filing cabinets in Branch of Finance.

Retrievability: Vouchers are filed by bureau voucher number and alphabetically by traveler name. Travel authorizations are filed by transaction number. Retrieved by manual search.

Safeguards: Files are kept in locked metal filing cabinets which are posted with the appropriate Privacy Act warning. During working hours only authorized personnel have access to the files. Computer: Safeguards as described in the National Bureau of Standards booklet, "Computer Security Guidelines for Implementing the Privacy Act of 1974," and procedures developed by MSHA under GSA circular E-34.

Retention and disposal: Disposition is in accordance with General Records Schedule No. 6, FPMR 101-11.4.

System manager(s) and address: Chief, Branch of Finance, MSHA, P.O. Box 25367, 730 Simms Street, Lakewood, Colo. 80215.

Notification procedure: To determine whether records are maintained on you in this system, write to the system manager or to the office cited under System Location.

Record access procedures: To see your records write the system manager or the office cited under System Location. Describe as specifically as possible the records sought.

Contesting record procedures: To request corrections or the removal of material from your files, write the system manager.

Record source categories: Travel vouchers are submitted by the traveler after incurring expenses of official travel pursuant to a signed travel authorization. Each voucher is a request for payment based on the tavelers record of official expenses. Input documents are supplied by all facilities of MSHA.

DOL/MSHA—7

System name: Travel Advance File

System location: Mine Safety and Health Administration, Branch of Finance, P.O. Box 25367, 730 Simms Street, Lakewood, Colo. 80215.

Categories of individuals covered by the system: All MSHA employees who have outstanding travel advances or who have closed travel advances.

Categories of records in the system: File consists of automatic data tape files of travel advance transactions retrieved on the basis of social security numbers, and forms filed in alphabetical order by surname, whereon employees request and receive advances of funds for the purpose of paying travel expenses incurred in the performance of official Government business. These forms also include a record of repayment against an advance, whether by set-off on travel vouchers or repaid by check, money order, etc.

Authority for maintenance of the system: 5 U.S.C. 5701 et seq., GSA regulations FPMR 101-7.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are (a) to provide an accounting record of obligation due to the U.S. Government from employees who have cash advances to defray expenses incurred in official travel. Payments to the traveler and repayments to the Government are reflected in this record; (b) to serve as a source file of hard copy documents for entries for travel advances in the Automated Finance System; and (c) computer listings are produced monthly of outstanding travel advances for supporting accounts receivable. Listings are also produced with a computer analysis to assist in the control and proper utilization of travel advances. Listings are produced in alphabetical order by name of traveler. Computer generated verification notices are mailed to individual travelers on a quarterly basis. Disclosures outside the Department of Labor may be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, contract, licence, grant, or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of security clearance, contract, license, grant or other benefit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file boxes in the Branch of Finance and on magnetic tape in the Division of A.D.P.

Retrievability: Files are indexed alphabetically by employee name and retrieved by manual search.

Safeguards: Files are kept in locked metal filing cabinets which are posted with the appropriate Privacy Act warning. During working hours only authorized personnel have access to the files. Computer: Safeguards as described in the National Bureau of Standards booklet, "Computer Security Guidelines for Implementing the Privacy Act of 1974," and procedures developed by MSHA under GSA circular E-34.

Retention and disposal: Disposition is in accordance with General Records Schedule 9 FPMR 101-11.4

System manager(s) and address: Chief, Branch of Finance, MSHA, P.O. Box 25367, 730 Simms Street, Lakewood, Colo. 80215.

Notification procedure: To determine whether records are maintained on you in this system, write to the system manager or to the office cited under System Location.

Record access procedures: To see your records write the system manager or the office cited under System Location. Describe as specifically as possible the records sought.

Contesting record procedures: To request corrections or the removal of material from your files, write the system manager.

Record source categories: Information for this system originates with the traveler who specifies the need of a travel advance on MSHA Form 1000-8, the request is concurred in by signature of a responsible supervisory official. Repayment entries on the file are as a result of actions taken by the individual to liquidate his travel advance.

DOL/MSHA—8

System name: Accident and Injury Records

System location: Office of Mine Safety and Health Administration Employee Safety Manager, U.S. Department of Labor, 4015 Wilson Blvd., Arlington, Va. 22203.

Categories of individuals covered by the system: Any MSHA employee who has had an on-the-job accident or injury.

Categories of records in the system: Records contain investigative information pertaining to any accident or injury an employee of MSHA is involved in.

Authority for maintenance of the system: 5 U.S.C. 7902, Sections 6 and 19 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 668, Executive Order 11807.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are (a) to identify deficiencies in the Employee Safety Programs that must be corrected in order to maintain a safe and healthy work environment; (b) adjudication of tort, employee, and similar claims against the Government. Disclosures outside the Department of Labor may be made (1) to General Services Administration when a GSA motor vehicle is involved in an accident; (2) to the U.S. Department of Justice when related to litigation or anticipated litigation; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, and/or license; (4) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license contract, grant, or other benefit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in manila folders.

Retrievability: Indexed by assigned accident number.

Safeguards: Folders kept in locked filing cabinets.

Retention and disposal: Reports are kept for 5 years and then destroyed.

System manager(s) and address: MSHA Employee Safety Manager, U.S. Department of Labor, 4015 Wilson Blvd., Arlington, Va. 22203.

Notification procedure: Inquiries regarding records in this system should be addressed to the systems manager. Such requests must be submitted in writing and be signed by the requester.

Record access procedures: To see your records write the systems manager or the office cited under System Location. Describe as specifically as possible the records sought.

Contesting record procedures: A petition for amendment should be addressed to the systems manager.

Record source categories: Reports are completed by the individual employees and their supervisors.

DOL/MSHA—9

System name: Clearance Records

System location: MSHA, Branch of Records Management, 4015 Wilson Blvd., Arlington, Va. 22203.

Categories of individuals covered by the system: Employees and prospective employees of MSHA on whom a security investigation has been conducted by the CSC or FBI.

Categories of records in the system: Records pertain to loyalty checks, character evaluations, and other information resulting from investigation by the CSC or NACI's.

Authority for maintenance of the system: Executive Order 10450.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Information used to determine qualifications of individuals for employment in sensitive positions with MSHA. (2) Transfer to the Department of Justice in the event of litigation involving the records or the subject matter of the records. (3) Transfer, in the event there is indicated a violation or potential violation of a statute, rule, regulation, order, or license, whether civil, criminal or regulatory in nature, to the appropriate agencies, whether Federal, State, local, or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statute, regulation, rule, order, or license violated or potentially violated. (4) Disclosure to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. (5) Disclosure to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in manila file folders.

Retrievability: Filed alphabetically by last name.

Safeguards: Files are kept in an approved three-way combination safe and only employees who have security clearance and are responsible for the system have access.

Retention and disposal: Records are kept as long as the individual is employed and then the records are destroyed.

System manager(s) and address: MSHA, Chief, Branch of Records Management, 4015 Wilson Blvd., Arlington, Va. 22203.

Notification procedure: Inquiries regarding records in this system should be addressed to the system manager. Such requests must be submitted in writing and be signed by the requester.

Record access procedures: A request for access may be addressed to the system manager. The request must be in writing and be signed by the requester.

Contesting record procedures: A petition for amendment should be addressed to the system manager.

Record source categories: Loyalty checks, inquiries, field investigations reports, and other Government agencies.

DOL/MSHA—10

System name: Coal Mine Health and Safety Special Investigations

System location: Office of the Administrator—Coal Mine Safety and Health, Mine Safety and Health Administration, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, Va. 22203 and some of the Coal Mine Safety and Health offices (see Appendix for address).

Categories of individuals covered by the system: Any individual alleged to have committed or have information concerning willfull or knowing violations of the Federal Mine Safety and Health Act of 1977 and the Coal Mine Health and Safety Act of 1969 and related section of the U.S. Code.

Categories of records in the system: Contains name, address, telephone number, social security number, occupation, place of employment, and other identifying data along with the type of allegation. This material includes interviews and other confidential data gathered by the investigator.

Authority for maintenance of the system: Investigations conducted pursuant to Sections 103, 105(c) and 110 of Public law 91-173 or amended by Public Law 95-164.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are (a) to determine validity of allegations and (b) for use in determining amount of civil penalty assessments against individuals and operators. Disclosures outside of the Department of Labor may be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a

violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; and (5) to Federal, State, or local agncies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant, or other benefit.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Manual: In manila file folders.

Retrievability: Filed by docket and status of case, indexed by name of mine, docket number, and date of receipt. Retrieved by manual search.

Safeguards: Maintained in locked file cabinets. Accessed only by authorized personnel.

Retention and disposal: Retained for 5 years then transferred to Federal Records Center. Destroy after 10 years.

System manager(s) and address: Administrator, Coal Mine Safety and Health, Room 814, Ballston Tower 03, 4015 Wilson Blvd., Arlington, Va. 22203.

Systems exempted from certain provisions of the act: Under the specific exemption authority provided by 5 U.S.C. 552a(k)(2) exempting this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and the portions of 29 CFR, 70a which implement these provisions.

DOL/MSHA—12

System name: Property Control

System location: (1) Mine Safety and Health Administration, Chief, Division of Management Services, 4015 Wilson Blvd., Arlington, Va. 22203, (2) Substantially all field offices in lists of field offices in Appendix.

Categories of individuals covered by the system: Any person who has responsibility for MSHA property; who have reserved parking spaces assigned, or who have submitted invention reports and all records directly related to property control functions.

Categories of records in the system: Contains information indicating what property, including equipment, application for motor vehicle operator's license, keys, motor pool vehicles, requests for assignment of carpool or reserved parking spaces, and transportation request books, for which the employee has custody and/or responsibility. A list is maintained of inventions by case numbers. In addition, all other records directly related to property control functions.

Authority for maintenance of the system: Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 483(b)(1).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary use of the records is the identification and control of MSHA property. Disclosure outside the Department of Labor may be made (1) to the U.S. Department of Justice when related to litigation or anticiapted litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, or license, to appropriate Federal, State, local or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) disclosure from the record of an individual in response to an inquiry from a congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are kept in manual form in file folders or cards indexes, microfilm cassettes, and computer disks.

Retrievability: Indexed by alphabetical order or control number. Entire file retrieved by manual search; frequently used information maintained on computer printouts.

Safeguards: Computer: In accordance with the National Bureau of Standards publication "Computer Security Guidelines for Implementing the Privacy Act of 1974." Manual: File cabinets. During working hours records are accessible only to authorized personnel.

Retention and disposal: In accordance with the General Records Schedule.

System manager(s) and address: Chief, Division of Management Services, MSHA, 4015 Wilson Blvd., Arlington, Va. 22203.

Notification procedure: To determine whether the records are maintained on you in this system, write to the systems manager or to the offices cited under Records Location.

Record access procedures: To see your records write the systems manager or the offices cited under Records Location. Describe as specifically as possible the records sought.

Contesting record procedures: To request corrections or the removal of material from your files, write the systems manager.

Record source categories: MSHA employees and any property control records maintained by MSHA.

DOL/MSHA—13

System name: Coal Mine Respirable Dust Program

System location: Coal Mine Safety and Health Activity, MSHA, U.S. Department of Labor, 4015 Wilson Blvd., Arlington, Va., 22203, and substantially all coal mine safety and health offices listed in Appendix.

Categories of individuals covered by the system: Individual coal miners for whom personal dust samples have been submitted for analysis.

Categories of records in the system: Contains data concerning mine identification, mine section, name of individual sampled, social security number, date of sample, and concentration of respirable dust contained in the personal sampler.

Authority for maintenance of the system: Title II of Public Law 91-173, Federal Coal Mine Health and Safety Act of 1969, as amended by Public Law 95-164 206.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary use of the record is to determine respirable dust levels in every active working mine to insure compliance with dust level standards. Disclosures outside the Department of Labor may be made (1) of respirable dust data to the U.S. Department of HEW in accordance with provisions of Public Law 91-173 as amended by Public Law 95-164; (2) of special studies relative to occupational types, mining methods, ventilation, etc., (3) to furnish mine operators with information relevant to the respirable dust program as it applies to their operations as required by the law; (4) to the U.S. Department of Justice when related to litigation or anticipated litigation; (5) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (6) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Computer on diskettes and mag tape.

Retrievability: Indexed by mine identification number and social security number frequently used information is maintained on computer printouts.

Safeguards: Records are stored in locked steel cabinets in locked rooms with access being granted only to duly authorized personnel.

Retention and disposal: Analysis forms are mailed to Denver and microfilmed. The forms and the microfilm record are maintained indefinitely. Computer tapes are purged periodically and computer output is utilized in the districts indefinitely.

System manager(s) and address: Chief, Division of Health, Coal Mine Safety and Health, MSHA, 4015 Wilson Blvd., Arlington, Va. 22203.

Notification procedure: To determine whether the records are maintained on you in this system, write to the system manager.

Record access procedures: To see your records write the system manager. Describe as specifically as possible the records sought.

Contesting record procedures: To request corrections or the removal of material from your files, write the system manager.

Record source categories: Mine operators submit the information used in this system.

DOL/MSHA—14

System name: Coal Mine Noise Level Program

System location: (1) Coal Mine Safety and Health Activity, MSHA, U.S. Department of Labor, 4015 Wilson Blvd., Arlington, Va. 22203.

(2) Substantially all Coal Mine Safety and Health Offices listed in Appendix.

Categories of individuals covered by the system: Individual coal miners for whom noise level samples have been submitted for analysis.

Categories of records in the system: Contains data concerning mine identification, mine section, name of individual sampled, social security number, date of sample, and noise level data.

Authority for maintenance of the system: Title II of Public Law 91-173, Federal Coal Mine Health and Safety Act of 1969 as amended by Public Law 95-164.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are: (a) determine noise levels in every active working mine to insure compliance with noise level standards; (b) special studies relative to occupational types mining methods, ventilation, etc. Disclosures outside the Department of Labor may be made (1) to furnish mine operators with information relevant to the noise program as it applies to their operations as required by the law; (2) to the U.S. Department of Justice when related to litigation or anticipated litigation; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (4) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Currently noise level data is entered onto a form which is sent to District Offices for manual processing and filing in manila folders. All district offices utilize diskettes and minicomputers to process the data.

Retrievability: Data is indexed by mine identification number, name of mine, name of operator, name of individual, and individual social security number.

Safeguards: Maintained in locked file cabinet. Accessed only by authorized personnel.

Retention and disposal: Forms and diskettes are retained indefinitely in District offices.

System manager(s) and address: Chief, Division of Health, Coal Mine Safety and Health, MSHA, 4015 Wilson Blvd., Arlington, Va. 22203.

Notification procedure: To determine whether the records are maintained on you in this system, write to the system manager.

Record access procedures: To see your records write the system manager. Describe as specifically as possible the records sought.

Contesting record procedures: To request correction or the removal of material from your files, write the systems manager.

Record source categories: Mine operators submit the information used in this system.

DOL/MSHA—15

System name: Health and Safety Training Records including Qualification and Certification Data

System location: Qualification and Certification Unit, Education and Training, Mine Safety and Health Administration, 730 Simms Street, Lakewood, Colo. 80215.

Categories of individuals covered by the system: Contains training data on miners, mining industry personnel, and Federal employees who have taken MSHA approved training courses. Also individuals certified and qualified as required by regulations.

Categories of records in the system: Contains name, social security number, mine ID number, training course, certification and/or qualification, instructor's name, and other relevant data.

Authority for maintenance of the system: Section 317(i) and 502 of Public Law 91-173 as amended by Public Law 95-164.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The primary uses of the records are (a) maintain records of training of individual miners, mining industry personnel, and State and Federal employees who have taken MSHA approved training courses; (b) issue certificates or certification cards to individuals who become qualified or certified under the law, as appropriate; (c) issue certification cards to instructors authorizing them to teach MSHA approved training courses; (d) provide information to monitor and/or expand safety training programs; (e) to verify that individuals have completed required training; (f) statistical reporting of training data in various formats for a variety of uses, e.g., reporting to Congress, publications, etc. Disclosures outside of the Department of Labor many be made (1) to coal companies requesting information to verify training required by law; (2) to Unions requesting information on training status of its members; (3) to coal operators associations requiring training for policy and programming utilization; (4) to the U.S. Department of Justice when related to litigation or anticipated litigation; (5) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local,or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (6) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Input forms to key tape to magnetic taps in the computer system. Microfilm records are stored in the Qualification and Certification Unit.

Retrievability: Computerized records are indexed by mine identification and individual social security numbers. Microfilm records are retrieved on basis of mine identification numbers, date, and course.

Safeguards: Computer safeguards as described in the National Bureau of Standards booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" and procedures developed by MSHA under GSA Circular E-34. Files are posted with the appropriate Privacy Act warning. During working hours only authorized personnel have access to take files.

Retention and disposal: Computer records are maintained on yearly historical file. Reporting outputs are discarded after they have served their purpose. Microfilm records are being maintained indefinitely for historical file purposes.

System manager(s) and address: Education Specialist, Qualification and Certification Unit, Education and Training, P.O. Box 25367, 730 Simms Street, Lakewood, Colo. 80215.

Notification procedure: Inquiries regarding records in this system should be addressed to the system manager. Such requests must be submitted in writing and be signed by the requester.

Record access procedures: To see your records write the system manager. Describe as specifically as possible the records sought.

Contesting record procedures: To request corrections or the removal of material from your files, write the system manager.

Record source categories: An individual on whom the record is maintained, instructors of the training courses, mine inspection personnel, mine operators, State personnel and miner's representatives or organizations who provide training courses required by MSHA.

DOL/MSHA—16

System name: Employee Locator System

System location: Mine Safety and Health Administration, Branch of Records Management, 4015 Wilson Blvd., Arlington, Va. 22203.

Categories of individuals covered by the system: Current employees of MSHA.

Categories of records in the system: Records contain name, title, office address, organization symbol, business telephone number, reason for preparation (i.e new listing, change of address or location, separation).

Authority for maintenance of the system: 5 U.S.C. 301, 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Used to assist callers in locating MSHA employees and for the use of other employees of MSHA who have a need for the records in the performance of their duties. (2) Used to compile agency telephone directory. (3) Transfer to the Department of Justice in the event of litigation involving the records or the subject matter of these records. (4) Transfer in the event there is an indicated violation or potential violation of a statute, regulation, rule, order, or license, whether civil, criminal or regulatory in nature, to the appropriate agencies, whether Federal, State, local, or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statute, regulation, rule, order, or license violated or potentially violated. (5) Disclosure to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision con-

cerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. (6) Disclosure to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation to an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on DI-28 forms on a 3 inch by 5 inch file box.

Retrievability: Records are filed alphabetically by name.

Safeguards: File is kept in a locked cabinet and only those employees who work with the records have access to them.

Retention and disposal: Records are maintained until a notice of change or employment is terminated. Records are destroyed when no longer needed.

System manager(s) and address: Chief, Branch of Records Management, Mine Safety and Health Administration, 4015 Wilson Blvd., Arlington, Va. 22203.

Notification procedure: Inquiries regarding records in this system should be addressed to the system manager. Such requests must be submitted in writing and signed by the requester.

Record access procedures: Individuals may write the system manager at the address indicated above for information concerning the procedures involved in gaining access to records in this system.

Contesting record procedures: A petition for amendment shall be in writing and addressed to the system manager

Record source categories: Information is from individual employees.

LOCATION OF NOTICES IN 1977 COMPILATION

Notices of this agency's systems of records appear in Volume II of the 1977 Compilation at 42 FR 49654. The price of this volume is sixty dollars and fifty cents.

AVAILABILITY OF 1977 COMPILATION

"Privacy Act Issuances—1977 Compilation" is available from Regional Depository Libraries at 50 locations around the country and can be examined at these libraries free of charge. The 1977 Compilation is also available at the General Services Administration Federal Information Centers, which are located at 38 central points around the country and may be examined at the central headquarters and all field offices of this agency. It is also available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. upon request, the Office of the Federal Register will furnish a photocopy of the full text of a particular records system published in the 1977 Compilation for a nominal fee.

[FR Doc. 78-25186 Filed 9-18-78; 8:45 am]

[6315-01]

COMMUNITY SERVICES ADMINISTRATION

PRIVACY ACT ISSUANCES

Notice of Incorporation by Reference

Agency: Community Services Administration.

Action: Incorporation by reference of Privacy Act issuances.

Summary: Federal agencies are required by the Privacy Act of 1974 to give annual notice of certain records they maintain. The notices published last year were compiled by the Office of the Federal Register into "Privacy Act Issuances—1977 Compilation." The purpose of this document is to incorporate by reference the notices that appear in "Privacy Act Issuances—1977 Compilation" and to publish in full the systems that this agency has amended since publication of the 1977 Compilation.

Dates: This document fulfills the annual notice requirements of the Privacy Act for 1978.

For further information contact: Alan O. Mann, Privacy Act Officer, Community Services Administration, 1200 19th Street, NW., Room 413, Washington, D.C. 20506. Telephone (202) 254-5300.

APPROVAL OF THE DIRECTOR

The notices of systems of records of this agency which appear in "Privacy Act Issuances—1977 Compilation" are incorporated by reference. The Director of the Office of the Federal Register granted approval to incorporate by reference these Privacy Act issuances on August 14, 1978.

Published below is the full text of the "Geographical Guidance for Accessing Systems of Records" to reflect changes in the Regional Office addresses and telephone numbers. Other than these changes none of this agency's systems of records have been amended since the 1977 Compilation.

Geographical Guidance for Accessing Systems of Records

Many CSA systems of records are maintained wholly or partially in the CSA Regional Offices. To facilitate access to such records, a listing of the CSA Regional Offices, the States served thereby, their addresses and telephone numbers are provided:

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room E400, Boston, Massachusetts 02203 (617) 223-4080.

Region II

New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, 32nd Floor, New York, New York 10007 (212) 264-1900.

Region III

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Gateway Building, 3535 Market Street, Room 2260, Philadelphia, Pennsylvania 19104 (215) 596-1000.

Region IV

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee. 101 Marietta Street, NW., Atlanta, Georgia 30323 (404) 221-2717.

Region V

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606 (312) 353-5987.

Region VI

Arkansas, Louisiana, New Mexico, Oklahoma, Texas. 1200 Main Street, Room M130, Dallas, Texas 75202 (214) 767-6125.

Region VII

Iowa, Kansas, Missouri, Nebraska. 911 Walnut Street, Room 1720, Kansas City, Missouri 64106 (816) 374-3361.

Region VIII

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Building, 1961 Stout Street, Room 1234, Denver, Colorado 80294 (303) 837-4767.

Region IX

Arizona, California, Guam, Hawaii, Nevada, Pacific Trust Territories. 450 Golden Gate Avenue, Box 36008, San Francisco, California 94102 (415) 556-4000.

Region X

Alaska, Idaho, Oregon, Washington. Arcade Plaza Building, Mail Stop 105A, 1321 Second Avenue, Seattle, Washington 98101 (206) 442-4910.

AVAILABILITY OF 1977 COMPILATION

"Privacy Act Issuances—1977 Compilation" is available from Regional Depository Libraries at 50 locations around the country and can be examined at these libraries free of charge. The 1977 compilation is also available at the General Services Administration Federal Information Centers, which are located at 38 central points around the country and may be examined at the central headquarters and all field offices of GSA. It is also available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Upon request, the Office of the Federal Register will furnish a photocopy of the full test of a particular records system published in the 1977 compilation, for a nominal fee.

Location of Notices in 1977 Compilation

Notices of this agency's systems of records appear in Volume V of the 1977 Compilation at pages 53430-53434 (42 FR 53430). The price of this volume is eight dollars.

John Gabusi,
Assistant Director for Management.

[FR Doc. 78-25522 Filed 9-18-78; 8:45 am]

Federal Register

TUESDAY, SEPTEMBER 19, 1978

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

FILLED MILK PRODUCTS; MILK, CREAM, AND CHEESE SUBSTITUTES; SKIM MILK CHEESE FOR MANUFACTURING; AND CHEESE AND RELATED CHEESE PRODUCTS

Identity Standards

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 102]

[Docket No 78N-0090]

FILLED MILK PRODUCTS; COMMON OR USUAL NAME

Withdrawal of Proposal and Termination of Rulemaking Proceedings

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposal.

SUMMARY: The Food and Drug Administration is withdrawing the proposal to establish a common or usual name for filled milk products and is terminating the rulemaking proceeding. The proposal would have established by regulation a common or usual name for filled milk products. The Commissioner of Food and Drugs is proposing elsewhere in this issue of the FEDERAL REGISTER a standard of identity for milk and cream substitutes and cheese substitutes.

EFFECTIVE DATE: This action is effective September 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: Under the U.S. district court decision in *Milnot Co.* v. *Richardson,* 350 F. Supp. 221 (S.D. Ill., 1972), holding the Filled Milk Act unconstitutional, the Commissioner concluded that appropriate labeling for filled milk products should be promptly considered and a regulation promulgated to govern the common or usual name of these products. Accordingly, a proposal to amend part 102 (21 CFR 102) by adding new § 102.18 to establish a common or usual name for filled milk products was published in the FEDERAL REGISTER of August 2, 1973 (38 FR 20748). Interested persons were invited to comment particularly on the suitability and meaning of the word "filled" in the name of the food.

A total of 250 comments were received in response to the proposal. Of this total, 233 comments either opposed adoption of the proposal as published or questioned the advisability of promulgating regulations governing the common or usual name of these products, and 17 comments favored the proposal as published or on condition that it provide for proof of nutritional equivalency. Stating that the meaning of the word "filled" is not comprehensible and could mislead consumers, 192 comments opposed the use of the term in the name of the food. They also opposed the use of the words "milk" and "cream" in the name of the food because of possible consumer confusion with the traditional product. Six comments favored the terminology as set out in the proposal. Twenty-one comments considered filled milk products to be imitation milk products which should be so labeled. Fourteen comments suggested using names with prefixes such as "mello" or suffixes such as "ine," as in various State regulations for non-milkfat-based products. Also suggested were names such as "modified," "blend," "blended," "substitute," "vegetable fat drink," and "nondairy product."

Since publication of the filled milk products proposal, the Commissioner has observed that many new substitute dairy foods, including cheese substitutes, have been marketed. These foods are made to resemble standardized dairy foods by complete or partial replacement of milkfat and/or milk protein with vegetable fats and proteins. Because the filled milk products proposal provides for the replacement of only milkfat with any fat or oil other than milkfat and does not mention milk protein, it lacks the provisions necessary for regulation of all of the new substitute dairy foods.

Therefore, in view of the adverse comments received on the proposal, and because it does not contain provisions consistent with those necessary for regulation of various other substitute dairy foods, the need for which is demonstrated by recent industry petitions to establish a standard of identity and/or a common or usual name regulation for cheese substitutes, the Commissioner concludes the proposal to establish a common or usual name for filled milk products is no longer necessary and rulemaking proceedings on the matter are terminated.

The Commissioner is proposing elsewhere in this issue of the FEDERAL REGISTER a standard of identity for milk and cream substitutes and cheese substitutes providing for both fat and protein replacement.

This action is taken under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055-1056, as amended, 70 Stat. 919, 72 Stat. 948 (21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 5.1)).

Dated: September 8, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-25818 Filed 9-18-78; 8:45 am]

[4110-03]

[21 CFR Parts 131 and 133]

[Docket No. 75P-0121]

SUBSTITUTES FOR MILK, CREAM, AND CHEESE

Standards of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would establish standards of identity for milk and cream substitutes and cheese substitutes. The proposed standards of identity would (1) establish descriptive names for milk and cream substitutes, and cheese and cheese product substitutes, (2) permit the use of any safe and suitable optional ingredients in their formulation, (3) establish compositional requirements including requirements for nutritional equivalence to the foods which they simulate, and (4) establish appropriate labeling requirements. These standards of identity are being proposed because of the introduction of many new dairy food substitutes and in response to petitions from the cheese industry. Any regulation issued on the basis of this proposal will reflect the Commissioner's consideration of relevant information presented at the food labeling hearings announced in the FEDERAL REGISTER of June 9, 1978.

DATES: Comments by November 27, 1978. Proposed compliance for products initially introduced into interstate commerce: One year after the date of issuance of a regulation.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs, on his own initiative, proposes to establish definitions and standards of identity for milk and cream substitutes (foods made in semblance of standardized milk and cream foods). He also proposes to establish, on his own initiative and in consideration of petitions from the National Cheese In-

stitute, 110 North Franklin Street, Chicago, Ill. 60606; Anderson Clayton Foods Co., One Main Place, Dallas, Tex. 75250; and Fisher Cheese Co., Wapakoneta, Ohio 45895, definitions and standards of identity for cheese and cheese product substitutes (foods made in semblance of cheese, cheese products, pasteurized process cheese, and pasteurized process cheese products).

The Commissioner has observed that many new dairy food substitutes, made in semblance of standardized dairy foods, have been introduced in markets recently. This increase in dairy food substitutes is due in part to a relaxation of restrictions on such foods since (1) the Filled Milk Act of 1923 (42 Stat. 1486), 21 U.S.C. 61-64, was declared unconstitutional by the U.S. District Court for the Southern District of Illinois in *Milnot Co.* v. *Richardson*, 350 F. Supp. 221 (S.D. Ill., 1972) and (2) the Filled Cheese Act of June 6, 1896 (29 Stat. 253) (26 U.S.C. 4831-4836) was repealed on October 6, 1974, by the 93d Congress (88 Stat. 1466).

The repeal of the Filled Cheese Act and the Filled Milk Act was recommended by the White House Conference on Food, Nutrition, and Health in December 1969. Consumers had expressed the desire for modified milk and cheese foods made with vegetable fats, but the development of such foods was inhibited by the restrictive nature of these acts.

The Filled Milk Act prohibited the shipment of any filled milk or cream in interstate commerce. The Filled Milk Act defined "filled milk" as "any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat, so that the resulting food is in imitation or semblance of milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated." This definition, however, was not intended to include any distinctive proprietary food compound which would not be readily mistaken in taste for milk or cream, or where such food was intended for feeding infants and young children.

By taxing the filled cheese and its producers and distributors, the Filled Cheese Act, which was administered by the Internal Revenue Service, sought to control and identify filled cheeses made in semblance of natural cheese. The Filled Cheese Act defined filled cheese as "all substances made from milk or skimmed milk, with the admixture of butter, animal oil or fats, vegetable, or any other oils or compounds foreign to such milk and made in imitation and semblance of cheese."

As a result of the repeal of the filled Cheese Act and the declaration of the Filled Milk Act as unconstitutional, filled cheese foods and filled milk foods are now subject solely to provisions of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act and move freely in interstate commerce as nonstandardized foods. In view of the change in the regulatory status of these foods and the recent increase in sales of dairy food substitutes, the Commissioner believes that the establishment of standards of identity for these and other foods made in semblance of standardized milk, cream, cheese, and foods made of cheese, will promote honesty and fair dealing in the interest of consumers.

Milk and Cream Substitutes

The Commissioner of Food and Drugs published in the Federal Register of May 18, 1968 (33 FR 7456) a notice of proposed rulemaking to establish standards of identity and quality for imitation milks and creams. Based on comments received in response to that proposal, a revised proposal that was limited to imitation milks was published in the Federal Register of October 9, 1969 (34 FR 15657). All comments received in response to this second proposal were opposed to adoption of the proposal as published. In addition the Commissioner became aware that the production of imitation milks was declining. The Commissioner, therefore, concluded that standards should not be established at that time and a notice of withdrawal of the October 9, 1969, proposal was published in the Federal Register of June 3, 1970 (35 FR 8584).

A third proposal to regulate milk substitutes was published in the Federal Register of August 2, 1973 (38 FR 20748). The proposal sought to establish the common or usual name, "filled ——," for the foods defined by the Filled Milk Act, the blank being filled in with the name of the counterpart milk or cream food as designated in part 131 (21 CFR Part 131). Comments on this proposal suggested that the term "filled" in "filled milk" is meaningless to most consumers and that it might be misleading by implying that something is missing in the traditional dairy food and that the "filled" dairy food is more complete. In view of these and other relevant comments, that proposal is being withdrawn. A notice of withdrawal of that proposal appears elsewhere in this issue of the Federal Register.

The Commissioner has reviewed the comments submitted in response to the imitation milk and filled milk proposals and he is proposing to establish a definition and standard of identity which will govern the composition and labeling of milk and cream substitutes. The Commissioner has observed the market and notes that many new dairy food substitutes are being sold with potentially misleading labeling. Many of these substitutes bear fanciful names while others have adopted "imitation" dairy food labeling. Also, some milk and cream substitute foods contain partial or total milk protein replacements as well as milkfat replacements. The Commissioner believes that a standard of identity that would encompass both types of substitutes should be established for these foods. Accordingly, he is proposing to establish such a standard in new § 131.300 Milk and cream substitutes as set out below.

Cheese Substitutes

The Commissioner of Food and Drugs has received three petitions from representatives of the cheese industry proposing the establishment of regulations to govern the nomenclature, composition, and labeling of cheese substitutes. He has also received two letters of comment suggesting common or usual names for these foods. A brief summary of these petitions and comments follows. The petitions and letters of comment are on file with the Hearing Clerk, Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

The National Cheese Institutes (NCI), 110 North Franklin Street, Chicago, Ill. 60606, submitted a petition dated June 10, 1975 (docket No. 75P-0121) proposing the establishment of a standard of identity for cheese analogs under the name "Golana" in part 133 (21 CFR Part 133). The NCI petition stated that the name "Golana" was selected because it was pleasant sounding, easily pronounced, and not related to another food. Golana is also "analog" spelled backward. The NCI rejected the word "cheese" as a root word on the ground that such terms might be confused with names of natural cheeses. Further, NCI suggested that the word "analog" was more applicable than words such as "alternate," "substitute," or "imitation," because analog connotes something having properties corresponding to something else, but different in origin. "Imitation," the petition noted, already has been defined in the Code of Federal Regulations and would connote nutritional inferiority, while "substitute" or "alternate" suggests the food is intended to serve in place of another. The NCI petition argued that these foods should stand on their own merits and not ride on the coattails of the foods which they simulate.

Briefly, the petition for the standard of identity for Golana defines a cheese

analog as the food made in semblance of cheese or a cheese product in which safe and suitable nonmilk ingredients supplement or replace any or all nutritive milk components. The proposed standard would also establish nutritional equivalency requirements for Golana and a system of nomenclature for Golana-type foods based on the degree of semblance to the cheese simulated, including its nutritional equivalency to that food. For example, a Golana simulating mozzarella cheese that conforms to the organoleptic and physical properties, as well as to the established fat and moisture requirements for mozzarella cheese, and contains the required levels of protein and nutrients proposed in the standard of identity for Golana would be named "Golana mozzarella cheese analog." A cheese analog that does not conform to the organoleptic and physical properties, and the fat and moisture requirements for a specific cheese variety, but is nutritionally equivalent to cheddar cheese, would be named simply "Golana cheese analog." However, a food that conforms to the organoleptic and physical properties of a cheese analog, but fails to conform to the organoleptic and physical properties and the compositional requirements of a specific cheese variety, and is not nutritionally equivalent to cheddar cheese would be named "Imitation Golana."

The Anderson Clayton Foods Co., One Main Place, Dallas, Tex. 75250, submitted a petition dated August 13, 1975 (docket No. 75P-0233) proposing the establishment of a common or usual name regulation for cheese substitutes in 21 CFR Part 102, under the name "Cheesana Cheese Substitutes." A second petition dated November 28, 1975 (docket No. 75P-0354) proposing the establishment of a common or usual name regulation for these foods under the name "Cheese and cheese product substitutes" was submitted by the Fisher Cheese Co., P.O. Box 409, Wapakoneta, Ohio 45895. Both firms manufacture cheese substitute-type foods. In both petitions, the proposed common or usual names would reference the type of standardized or recognized cheese variety simulated, e.g., "Cheesana Cheddar Cheese Substitute" or "Cheddar Cheese Substitute," followed by an informative statement defining the distinguishing characteristic of the food such as "contains vegetable oil." Both petitions recommended establishing nutritional equivalency requirements for cheese substitutes but neither would require that the cheese substitute conform to the established fat and moisture requirements of the cheese being simulated.

Two letters from industry representatives suggested common or usual names for cheese substitutes. One comment stated that the name should inform the consumer of the basic nature of the substitute. The comment further suggested the use of a phrase such as "Highly Polyunsaturated Filled —— Cheese" be adopted for filled cheeses which provide a minimum of 30 percent polyunsaturates of total fats, with a total polyunsaturated/saturated fat ratio of at least 1:1 and maximum cholesterol level of 15 milligrams/100 grams product. Filled cheeses which do not meet these standards would simply be designated as "Filled —— Cheese." In both cases, the blank would be filled in with the type of filled cheese, e.g., "cheddar." The second comment suggested that names such as "nondairy imitation cheese" or "nondairy cheese replacement" be used instead of a contrived or arcane name that would be confusing to consumers and that would require extensive advertising to establish the food's identity.

The Commissioner has considered both comments and has decided that the names suggested would not be generally applicable to all types of cheese substitutes. As indicated above, the use of the term "filled" to refer to substitutes containing replacements for milkfat may be confusing to consumers and may cause some consumers to think filled dairy products are superior to traditional dairy products. The suggested phrase "Highly Polyunsaturated Filled —— Cheese" could imply tht the food is a special dietary food. Nomenclature for special dietary foods is beyond the scope of this proposal. The names "nondairy imitation cheese" and "nondairy cheese replacement" would not accurately describe the nature of all cheese and cheese product substitutes since many substitutes use milk solids and milk derived ingredients, such as casein, whey or modified whey, milkfat, or lactose as components of the food.

Standards of Identity Versus Common or Usual Name Regulations

Both standards of identity and common or usual name regulations establish the name of the food, which identifies and describes the food's basic nature. In addition to establishing the name of the food, the common or usual name regulation may require that the name of the food include the percentage of any characterizing ingredient when the proportion of such ingredient has a material bearing on the price or when the label or appearance of the food may otherwise create an erroneous impression that such ingredient is present in an amount greater than is actually the case. The intended purpose is to provide consumers with relevant information about an important aspect of the food's composition in the labeling so that informed purchasing decisions can be made.

In addition to providing for informative labeling, standards of identity provide a further measure of consumer protection by defining the composition of the food, prescribing the mandatory ingredients as well as the optional ingredients, and establishing the amounts or relative proportions of these ingredients in the food. Most standards of identity require that the common or usual name of all optional ingredients be declared on the label unless exempted by the Federal Food, Drug, and Cosmetic Act or by other regulations. Standards of identity are established to promote honesty and fair dealing in the interest of consumers. They serve to eliminate confusion in those cases where it would be difficult for the consumer to determine, solely on the basis of informative labeling, the relative merits of a variety of products superficially resembling one another.

The standards of identity governing natural cheeses do not provide for variations from the established levels or ranges of minimum fat and solids content or the maximum allowable moisture content, although these standards may allow for variations in the manufacturing process as long as the resultant cheese exhibits the same physical and chemical properties. The composition of the ingredients, the types of organisms used, and the manufacturing process contribute to the uniqueness of a given cheese variety. The differences in total and relative amounts of fat, milk solids-not-fat, and moisture present in cheese ingredients are basic reasons that one cheese variety is distinct from another. Each natural cheese standard of identity thus insures the integrity of the natural cheese by setting limits on its fat, milk solids-not-fat, and moisture content.

Common or usual name regulations would not restrict the composition of cheese substitutes, except as is required for nutritional content. Manufacturers would be free to vary the fat content of these foods to suit consumer's preferences and pocketbooks. In a nationwide survey of consumers conducted by the U.S. Department of Agriculture, "Homemakers' Opinions on Dairy Products and Imitation Foods" (Marketing Research Report No. 995, May 1973), the majority of the homemakers polled thought that, generally, imitation foods were cheaper, contained fewer calories, were more convenient and easier to use, and had better keeping characteristics than genuine dairy foods. The majority also felt that genuine dairy foods had superior taste, food value, and purity or absence of additives compared to the imitation.

Hence, cheese substitutes, if regulated by a common or usual name regulation as petitioned for by Fisher Cheese Co. or by Anderson Clayton Foods, might not be inconsistent with consumer expectations. This could be so even though such cheese substitutes would not have to meet fat content requirements or possess the same organoleptic and physical characteristics as the standardized cheese, provided that the cheese substitutes cost less and effectively served the purposes for which they were designed. Further, absence of specific compositional requirements would allow more flexibility in developing new cheese substitutes.

A common or usual name regulation could require that the amount and type of protein and fat in the substitute food be included in the labeling. These foods also would be required to bear nutritional labeling. With such labeling supplementing an appropriate product name, it is doubtful that these foods would be mistaken for genuine dairy foods. However, each of these requirements also may be accomplished by standards of identity.

A standard of identity such as that petitioned for by NCI could include a requirement that the moisture, solids, and fat values for the substitute food be equivalent to those of the food being simulated. This compositional requirement would assure the consumer of uniformity of composition and would prevent the debasement of foods as costs of ingredients increase.

The adoption of a standard of identity also would serve a regulatory function. Consumers' ability to distinguish one cheese variety from another or one food made with cheese from another by taste and sight varies because the determination is subjective. The only objective, practical way to determine whether a specific cheese variety or specific food made with cheese is properly labeled as to variety or type is to analyze the food for fat, solids, and moisture content. With such objective analyses and subjective organoleptic evaluations, a regulatory agency can make a determination concerning label claims.

A standard of identity for cheese substitutes would also be more consistent with the ongoing revisions of part 133 (21 CFR Part 133). In the FEDERAL REGISTER of October 4, 1977 (42 FR 53970) the Commissioner published a proposal that would revise the current pasteurized process cheese, cheese food, and cheese spread standards of identity and group them into two categories—process cheese and cheese products.

Under that proposed revision, all pasteurized process cheeses would remain in one standard of identity category and retain their current nomenclature except that use of the term "pasteurized" in the name would be optional. All pasteurized process cheese foods and pasteurized process cheese spreads, which are generally distinguished from pasteurized process cheese by their lower fat and solids and higher moisture contents, would be grouped into a second category—"pasteurized process cheese products." The terms "pasteurized" and "process" in the names of pasteurized process cheese products would be optional. The proposed revision would require label declaration of the percent of milkfat contained in process cheese and process cheese products. In that proposal the Commissioner reasoned that closely related foods differing primarily in percent of fat and moisture could best be identified by labeling the percentage of fat rather than by different names, such as "food" or "spread." The proposed revision would also require nutritional and complete ingredient labeling.

A similar labeling approach would be equally appropriate for cheese substitutes. A standard of identity for cheese substitutes, as well as one for milk and cream substitutes, could require label declaration of the percent and type of fat used and/or the type of protein ingredients used in the food if other than milk protein. In addition, the standards of identity could be sufficiently flexible to allow for some variability within the compositional requirements. Thus, the standards of identity for the substitutes could establish moisture, solid, and fat content requirements consistent with the standards of identity for the foods they simulate, yet allow for variations in those compositional requirements, within limits, established in the standards, and/or with required label declaration.

The provision permitting the composition of certain foods to vary within certain limits appears in several standards of identity although label declaration may not always be required. Although most cheese standards of identity include minimum levels of fat and solids, the standards of identity for part-skim cheese foods and Neufchatel cheese permit the fat content to vary within a specified range. Further, in view of trends indicating consumer preferences for low fat dairy foods, and the need for economical, yet nutritious foods, it seems only logical to permit the fat content of cheese substitutes to differ from that of the standardized foods they simulate, as long as consumers are not misled.

Establishing a standard of identity for cheese substitutes with adequate requirements for label declaration of ingredients in part 133 (21 CFR Part 133) is a logical extension of the proposed revision of the process cheese and cheese products standards of identity. This approach would keep all nomenclature specifically identifiable with cheese type foods together in one part of the Code of Federal Regulations. Moreover, in view of the fact that dairy foods generaly are regulated by standards of identity, it would seem reasonable to regulate vegetable fat substitutes for these foods in a like manner. The Commissioner maintains that this approach is least disruptive and most consistent with current regulations and policies. Similarly, a standard of identity for mild and cream substitutes could be established in part 131 (21 CFR Part 131) with the standards of identity for milk and cream. Standards of identity for these dairy foods are generally preferred by industy and have served the public well for many years. A consistent and systemized regulatory approach to one general type of food lends itself to better understanding and acceptance by industry and the public. Accordingly, the Commissioner concludes that standards of identity for milk, cream, and cheese substitutes will promote honesty and fair dealing in the interest of consumers.

OTHER REQUIREMENTS

The three petitions for cheese substitutes indicate an intent to utilize the name of the standardized food being simulated as part of the name of the substitute food. The Commissioner has considered the use of the names of specific cheese varieties in the names of cheese substitutes. He believes such use appears reasonable and would promote honesty and fair dealing in the interest of consumers. This is particularly true if broad compositional requirements for nutritional equivalency are established for cheese substitutes as set out in this proposed rule. If broad compositional requirements (e.g., moisture and fat levels) as well as requirements are not applied, consumers could find that a certain food claiming to be a substitute for a specific cheese or cheese product does not resemble that food in physical attributes or composition.

The Commissioner maintains that, if the name of the substitute food includes the name of the traditional food it simulates, the substitute food should be reasonably similar to the traditional food. Thus, the substitute food should be nutritionally equivalent to the traditional food and should have similar levels of fat and moisture, as well as similar physical attributes such as color, body, and texture. The Commissioner is aware that regardless of the fat and moisture content, the flavor and texture of cheese substitutes would probably differ in some respects from natural cheeses because vegetable fats and proteins have their

own unique organoleptic properties. However, a requirement for similarity would insure that the characteristics of the cheese substitute resemble those of the traditional food used in the name of the cheese substitute.

NOMENCLATURE

A scheme for establishing the nomenclature for cheese substitutes is shown in the chart below. The scheme provides for: (1) Cheese substitutes that comply with the compositional requirements for fat and moisture content of the cheeses which they simulate, and (2) those that do not comply with the established fat and moisture contents of such cheeses. The name of the cheese substitute that conforms to the required fat and moisture levels for a standardized cheese product simulated would consist of the name of the cheese simulated followed by the term "substitute." In the case of a cheese substitute that does not conform to the established fat and moisture levels for the cheese simulated, the name of the food would consist of the name of the cheese simulated followed by the terms "product substitute." The term "product" is used to indicate a variation in the fat content and is consistent with the use of the term in the proposed pasteurized process cheese standards revision. In addition, a declaration of the type of fat contained and the percent by weight of the total fat in the cheese substitute would be required in the name of the substitute. Further, the Commissioner proposes that the name be accompanied by an additional statement, as applicable, which identifies other nonmilk ingredients used to replace milk protein in the manufacture of the cheese substitute.

The Commissioner notes that the declaration of the percent of milkfat in cheeses is not required by the standards of identity for most cheeses. However, he believes that the declaration of the percent of fat in cheeses is of interest to consumers for comparison purposes and is recommending that these foods be labeled with the percent of milkfat by weight contained in the food. He further notes that the declaration of the percent of milkfat will trigger nutritional labeling of the product in accordance with § 101.9(a) (21 CFR 101.9(a)) of this chapter. The proposed system of nomenclature in the chart below incorporates this recommendation for declaration of the percent of milkfat in natural cheeses, as well as certain provisions of the proposed revisions in the nomenclature of the pasteurized process cheese and pasteurized process cheese foods and spreads.

The proposed regulation would require that cheese substitutes that are nutritionally inferior to the cheese which they simulate be labeled with the term "imitation," in accordance with section 403 of the act and § 101.3(e) (21 CFR 101.3(e)) of the regulations. The proposed system of nomenclature would provide adequately for cheese substitutes already being marketed. Further, it would eliminate the need for manufacturers to alter formulations of existing foods in order to comply with the required fat and moisture levels in standarized cheese and cheese products.

Cheese Substitutes Nomenclature Based on Consideration of Composition

Standardized cheese	Cheese substitute
——cheese——pct fat.	——cheese substitute——pct vegetable fat and milkfat.
The first blank is filled in with the name of the standardized cheese variety and the second blank is filled in with the percent of milkfat in the cheese. Declaration of percent fat is recommended but not required unless stated in the standard of identity for the cheese.	The first blank is filled in with the name of the cheese being simulated, if it meets the fat and moisture requirements of the standardized food. The second blank is filled in with the percent of fat in the cheese substitute.
For example: Cheddar cheese 30 pct milkfat.	For example: Cheddar cheese substitute, 30 pct vegetable fat and milkfat.
Pasteurized process cheese——pct fat.	Pasteurized process cheese substitute——pct vegetable fat and milkfat. The blank is filled in with the percent of fat in the food.
For example: Pasteurized process cheese, 33 pct milkfat.[1]	For example: Pasteurized process cheese substitute, 33 pct vegetable fat and milkfat.[1]
——cheese product.	——cheese product substitute.
——pct milkfat.	——pct vegetable fat and milkfat.
The first blank is filled in with the name of the standardized food when the fat and moisture content requirements are optionally variable, or when the fat and moisture content varies from that of the standardized food. The word "product" in the name further indicates that a compositional variation exists.	The first blank is filled in with the name of the food simulated and the second blank is filled in with the percent of fat in the food.
For example: Pasteurized process cheese product, 10 pct milkfat.[2]	For example: Pasteurized process cheese product substitute, 10 pct vegetable fat and milkfat.[2]

[1] Use of the term "pasteurized" is optional.
[2] Use of the terms "pasteurized" and "process" is optional.

The Commissioner maintains that the requirements for the composition of cheese substitutes should remain flexible as long as the foods are formulated from safe and suitable ingredients. However, a cheese substitute should be nutritionally equivalent to the food simulated.

This proposal defines nutritional equivalence for cheese substitutes which are intended to substitute for cheeses and cheese products. The Commissioner believes that it would be impracticale to establish nutrient profiles for each food for which a cheese substitute may be developed. Consequently this proposal identifies the nutritional qualities in terms of vitamins, minerals, and protein content and quality, which must be met in cheese substitutes simulating cheeses that fall into one of four categories of cheese and cheese products. The proposed categories, the first three of which are based upon the average protein levels and the other on minimum protein levels present in the foods comprising the categories, are: (1) Cream cheese (Neufchatel cheese and cream cheese), 8-10 percent protein, 9 percent average; (2) cottage cheese (cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), 12-17 percent protein, 14 percent average; (3) all other natural cheeses (e.g., bleu, cheddar, gruyere, mozzarella, swiss, etc.), 19-30 percent protein, 24 percent average; and (4) process cheese, 23 percent minimum protein, and cheese products (process cheese food, process cheese spread, and natural cheese products which do not comply with established fat and moisture contents), 16 percent protein and higher levels, 16 percent minimum. The protein values were calculated from data obtained from U.S. Department of Agriculture Handbook No. 8-1, "Composition of Foods. Dairy and Egg Products. Raw, Processed, Prepared," 1976. The minimum value used for cheese products is based on the protein content for process cheese spreads which have a lower protein content than process cheese foods. Since this category will also encompass cheese substitutes which simulate other natural cheeses but which may exceed the maximum moisture content of the standardized cheese and which would contain a

lower percent of total solids, this lower protein content, 16 percent, is being proposed as appropriate for this category of foods. The Commissioner specifically requests information on the appropriateness of this minimum protein requirement for cheese product substitutes, since data on cheese products are limited. Further, in order for substitutes to maintain nutritional equivalence to the cheese or cheese product simulated, the proposed regulation includes a requirement for the nutritional quality of the protein used in the formulation of the substitute foods. If the cheese or cheese product substitute is made with milk protein or protein of vegetable origin, the protein efficiency ratio (PER) must be at least 100 percent that of casein.

The proposed vitamin and mineral requirements for cheese and cheese product substitutes have been based primarily on average values for the various cheeses in each category and are expressed in terms of amounts of these nutrients per gram of protein to be contained in the food. For the most part, these vitamins and minerals are those which are present in measurable amounts, i.e., in amounts equal to or greater than 2 percent of the U.S. recommended daily allowance (U.S. RDA) for that nutrient in a 1-ounce serving of the cheese.

Vitamin A has been included in the nutrient profiles for all cheese and cheese product substitutes except cottage cheese type products. Vitamin A is not present in lowfat and dry curd cottage cheese in measurable amounts. A serving of cottage cheese, however, contains approximately 3½ percent of the U.S. RDA for vitamin A. In using the averaging concept for establishing nutrient levels (i.e., the average of the values for a nutrient for the foods comprising a particular category), the average value for vitamin A for cottage cheese type products is less than 2 percent of the U.S. RDA. Hence, no requirement for vitamin A has been included in the cottage cheese nutrient profile. Similar calculations were used to determine the proposed requirements for other nutrients, such as riboflavin, pantothenic acid, vitamins B_6 and B_{12}, folacin, calcium, phosphorus, and zinc.

A requirement for zinc has been included in all of the nutrient profiles for cheese substitutes except cream cheese. These are 0.03 mg zinc for cottage cheese, 0.10 mg for process cheese and natural cheeses, and 0.15 mg for cheese products, provided the cheese substitutes are made with milk protein. If the protein component in the cheese substitute is primarily of vegetable origin, the proposed zinc requirement is twice the proposed requirement for substitutes made with milk protein. The increased level of zinc is necessary because the presence of phytate and other mineral-binding components in foods made from protein of vegetable origin decreases the bioavailability of zinc.

The phosphorus content of process cheese and cheese products is normally higher than that of natural cheese because of the phosphate-containing emulsifiers which may be used in their manufacture. Consequently, a higher level of phosphorus has been proposed for nutritional equivalence for cheese substitutes simulating process cheese and process cheese products.

Although no U.S. RDA has been established for potassium, this nutrient has been included in the nutrient profiles for cottage cheese and for the milk foods. Potassium occurs at significant levels in these foods and is essential for human nutrition. The Commissioner maintains that milk and cottage cheese substitutes should provide levels of potassium consistent with those in milk and cottage cheese. The proposed levels for potassium have been based on data obtained from U.S. Department of Agriculture Handbook 8-1.

Nutrient profiles are proposed for six categories of milk foods. Four of these categories differ primarily by the fat content of the class of foods, i.e., whole milk, lowfat milk, skim milk, and cream. Separate categories were established for sweetened condensed milk and cultured buttermilk because certain nutrients present in the other four categories are not present in sweetened condensed milk or cultured buttermilk at the level of 2 percent of the U.S. RDA per serving or portion of those foods. Those nutrients which are not present in measurable amounts in these foods are vitamin C, niacin, vitamin B_6, and folacin in a 1-fluid-ounce portion of sweetened condensed milk and folacin and vitamin A in a one-cup portion of cultured buttermilk.

The Commissioner proposes that, where a standard of identity for a substitute for milk food contains provisions for the required or optional addition of vitamin A and/or vitamin D, such provisions will be consistent with the provisions for the addition of vitamin A and/or vitamin D in the standard of identity for the food simulated.

Vitamin A is the only nutrient in cream foods which is present at a level of 2 percent of the U.S. RDA. Hence the proposed nutrient profile for cream foods provides for a minimum level of vitamin A in International Units of vitamin A per gram of fat. The other nutrient profiles for milk foods express the requirement for vitamin A in grams of protein present in the food.

The proposed protein levels for milk food substitutes are based on average protein levels for milk foods obtained from U.S. Department of Agriculture Handbook 8-1. If the milk food substitute is made with milk protein and/or protein of vegetable origin, the protein efficiency ratio (PER) of the finished food must be equal to that of milk, i.e., 108 percent of that of casein (Chapman, D. G., Raul Castillo, and J. A. Campbell, "Evaluation of Protein in Foods," "Can. J. Biochem. Physiol.," 37, 679 (1959)). No attempt has been made to provide for protein fortified lowfat milk and skim milk substitute foods. However, manufacturers may increase protein levels in these substitute foods consistent with provisions in the standards of identity for lowfat milk in § 131.135 (21 CFR 131.135) and for skim milk in § 131.145 (21 CFR 131.145).

Having considered the comments received on cheese and cheese product substitutes and present marketing trends of new dairy product substitutes, the Commissioner believes that the establishment of standards of identity for milk and cream substitutes in new § 131.300 and cheese substitutes in new § 133.300 will promote honesty and fair dealing in the interest of consumers.

In a notice published in the FEDERAL REGISTER of June 9, 1978 (43 FR 25296), the Food and Drug Administration, the U.S. Department of Agriculture, and the Federal Trade Commission announced a series of five public hearings to discuss several issues related to food labeling, including ingredient labeling, nutrition labeling, and imitation foods. The last of these hearings is scheduled for October 25-26, 1978. Because the Commissioner intends to take into consideration all relevant information presented at the hearings in developing a regulation based upon this proposal, the Commissioner has scheduled the comment period on this proposal to extent beyond the last of the hearings; comments may be submitted on or before November 27, 1978.

The Commissioner proposes that all products initially introduced into interstate commerce on or after 1 year following the issuance of a regulation based upon this proposal shall comply with the regulation, except for any provisions that may be stayed by the filing of proper objections.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in § 25.1(d)(4) (21 CFR 25.1(d)(4)) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401,

701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes to amend Parts 131 and 133 as follows:

1. Part 131 is amended by adding new § 131.300 as follows:

§ 131.300 Milk and cream substitutes.

(a) *Description.* A milk or cream substitute is a food made in semblance of a standardized food as otherwise defined in this part in which safe and suitable nonmilk ingredients replace all or part of the nutritive milk components of the milk or cream foods simulated, whether or not the food is fluid, concentrated, dried, or in frozen form. The milk or cream substitute shall be pasteurized, ultrapasteurized, or sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage. The milk or cream substitute shall possess similar physical and organoleptic properties to the food simulated and the fat and solids-not-fat content of the milk or cream substitute shall meet the milkfat and milk solids-not-fat requirements contained in the standard of identity of the counterpart milk or cream food. In addition, the milk or cream substitute shall meet the requirements in paragraph (b) of this section.

(b) *Nutritional equivalency.* A milk or cream substitute that is nutritionally inferior to the milk or cream food it simulates shall be labeled as an "imitation" milk or cream substitute, as required by § 101.3(e) of this chapter. For purposes of § 101.3(e)(2) of this chapter, a milk or cream substitute shall be considered nutritionally equivalent to the food being simulated if it meets all of the following applicable requirements:

(1) *Nutrient profiles for substitutes simulating milk and cream foods.* (i) Nutrient profile for substitutes simulating whole milk foods:

[Percent by weight]

Foods:	Minimum protein content
Milk	3.3
Evaporated milk	6.8
Dry whole milk	26.0
Plain whole milk yogurt	3.5
	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	36.0
Magnesium, milligrams	3.5
Phosphorus, milligrams	29.0
Potassium, milligrams	46.0
Zinc, milligrams	.13
Vitamin C, milligrams	.26
Thiamine, milligrams	.01
Riboflavin, milligrams	.04
Pantothenic acid, milligrams	.10
Vitamin B_6, milligrams	.01
Folacin, micrograms	1.6
Vitamin B_{12}, micrograms	.09
Vitamin A, international units	36.0

(ii) Nutrient profile for substitutes simulating lowfat milk foods:

[Percent by weight]

Foods:	Minimum protein content
Lowfat milk, 0.5 to 2 percent fat	3.3
Plain lowfat yogurt, 0.5 to 2 percent fat	3.5
Lowfat dry milk, 5.0 to 19.9 percent fat	29.0
	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	36.0
Magnesium, milligrams	3.7
Phosphorus, milligrams	29.0
Potassium, milligrams	47.0
Zinc, milligrams	.13
Vitamin C, milligrams	.26
Thiamine, milligrams	.01
Riboflavin, milligrams	.04
Pantothenic acid, milligrams	.10
Vitamin B_6, milligrams	.01
Folacin, micrograms	1.6
Vitamin B_{12}, micrograms	.11
Vitamin A, international units	[1]18.9

[1]The value, 18.9 international units, for vitamin A is applicable to substitutes for lowfat yogurt and other nonstandardized lowfat milk products except lowfat dry milk. A lowfat dry milk substitute shall contain added vitamins A and D such that, when prepared according to label directions, each quart contains 400 international units of vitamin D and not less than 2,000 international units of vitamin A.

(iii) Nutrient profile for substitutes simulating skim milk foods:

[Percent by weight]

Foods:	Minimum protein content
Skim milk	3.4
Evaporated skimmed milk	7.6
Nonfat dry milk	35.0
	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	36.0
Magnesium, milligrams	3.3
Phosphorus, milligrams	28.0
Potassium, milligrams	48.0
Zinc, milligrams	.12
Vitamin C, milligrams	.20
Thiamine, milligrams	.01
Riboflavin, milligrams	.04
Pantothenic acid, milligrams	.10
Vitamin B_6, milligrams	.01
Folacin, micrograms	1.3
Vitamin B_{12}, micrograms	.09
Vitamin A, international units	[1]
Vitamin D, international units	[1]

[1]As required by the standard of identity for the food simulated. An evaporated skimmed milk substitute shall contain added vitamins A and D such that each fluid ounce of the food contains 25 international units of vitamin D and not less than 125 international units of vitamin A.

(iv) Nutrient profile for substitutes simulating cultured buttermilk:

	Percent by weight
Minimum protein content	3.3
	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	35.0
Magnesium, milligrams	3.3
Phosphorus, milligrams	27.0
Potassium, milligrams	46.0
Zinc, milligrams	.13
Ascorbic acid, milligrams	.30
Thiamine, milligrams	.01
Riboflavin, milligrams	.05
Pantothenic acid, milligrams	.08
Vitamin B_6, milligrams	.01
Vitamin B_{12} micrograms	.07

(v) Nutrient profile for substitutes simulating sweetened condensed milk:

	Percent by weight
Minimum protein content	7.0
	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	36.0
Magnesium, milligrams	3.2
Phosphorus, milligrams	32.0
Potassium, milligrams	47.0
Zinc, milligrams	.12
Thiamine, milligrams	.01
Riboflavin, milligrams	.05
Pantothenic acid, milligrams	.10
Vitamin B_{12} micrograms	.00
Vitamin A, international units	41.0

(vi) Nutrient profile for substitutes simulating cream:

	Amount per gram of fat
Nutrient: Vitamin A, international units	37.7

(2) The zinc requirement is doubled if the protein component of the milk substitute is obtained primarily from vegetable protein products.

(3) The protein efficiency ratio (PER) of the protein component of the milk substitute shall be at least 108 percent of that of casein.

(4) Substitutes for milk foods, in addition to the vitamin requirements established in paragraph (b)(1) of this section, are also required to contain an additional amount of vitamin A or vitamin D equivalent to that of the food simulated when the food simulated is required by an applicable standard of identity to contain these added vitamins in a prescribed amount. Further, if the standard of identity for the food simulated provides for the optional addition of vitamins A and/or D, then the food substitute simulating that food will contain vitamins A and/or D in an amount equivalent to that prescribed in the applicable standard of identity for the food simulated.

(5) Compliance with the requirements for other nutrients in this paragraph will be deemed to have been met if reasonable overages of vitamins and minerals, within limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the life of the food under customary conditions of distribution and storage.

(c) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975.[1]

(1) *Fat content.* "Fat—Official Final Action," sections 16.052, 16.114, 16.129, 16.156, and 16.157, as appropriate.

(2) *Moisture content.* "Moisture—Official Final Action," section 16.149.

(3) *Solids-not-fat content.* Calculated by subtracting the fat content from

[1]Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

Interested persons may, on or before November 27, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 8, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-25817 Filed 9-18-78; 8:45 am]

[4110-03]

[21 CFR Part 133]

[Docket No. 77P-0070]

PASTEURIZED PROCESS CHEESE AND CHEESE PRODUCTS

Proposed Revision of Definition and Standards of Identity; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on a proposed rule that would revise the standards of identity for pasteurized process cheese and pasteurized process cheese products. This action is based on requests from industry. The reopened comment period will run concurrently with the comment periods for two proposed rules published elsewhere in this issue of the FEDERAL REGISTER: The proposed rule to establish standards of identity for milk, cream, and cheese substitutes and the proposed rule to revise the standards of identity for nine natural cheeses based on the international standards for these foods.

DATE: New deadline for comments November 27, 1978.

ADDRESS: Written comments to Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of October 4, 1977 (42 FR 53970), the Commissioner of Food and Drugs proposed revision of the standards of identity for pasteurized process cheese and other pasteurized process cheese products. Comments were to be filed on the proposal by January 3, 1978.

Subsequently, the Commissioner received several requests from industry for extension of the comment periods on the proposal. In view of two other related proposals the agency planned to issue, the Commissioner decided not to extend the comment period at that time but rather, to reopen the comment period on publication of the new proposals. These new proposals which would: (1) establish standards of identity for milk, cream, and cheese substitutes (docket No. 75P-0121), and (2) revise the standards of identity for nine natural cheeses based on a review of the recommended international standards for these foods (docket No. 77N-0331), are published elsewhere in this issue of the FEDERAL REGISTER.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), the comment period on the proposal for pasteurized process cheese and other pasteurized process cheese products is hereby reopened and shall run concurrently with the comment periods established for the proposals for milk, cream, and cheese substitutes and for the nine natural cheeses.

Interested persons may, on or before November 27, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal.

Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the hearing of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 8, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-25820 Filed 9-18-78; 8:45 am]

[4110-03]

[21 CFR Part 133]

[Docket No. 77N-0331]

CHEESES AND RELATED CHEESE PRODUCTS

Proposal Based on International Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would revise and update the standards of identity for nine cheese and appropriate cross-referenced standards. In addition, amendments to the nine cheese standards are proposed to bring them into closer conformance with international standards recommended by the Codex Alimentarius Commission. Any regulation issued on the basis of this proposal will reflect the Commissioner's consideration of relevant information presented at the food labeling hearings announced in the FEDERAL REGISTER on June 9, 1978.

DATES: Comments by November 27, 1978. Proposed compliance for products initially introduced into interstate commerce: One year after the date of issuance of a regulation.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing to revise the standards of identity for blue cheese, cheddar cheese, edam cheese, gouda cheese, gruyere cheese, limburger cheese, provolone cheese, samsoe cheese, swiss cheese, and the cross-referenced cheeses—cheddar cheese for manufacturing, low sodium cheddar cheese, and swiss cheese for manufacturing. The purpose of these revisions is to: (1) Provide for full ingredient declaration; (2) relax recipe requirements to permit use of safe and suitable ingredients that do not change the basic identity of the food or adversely affect the physical or chemical characteristics; and (3) amend compositional requirements to be consistent with the "recommended international standards" (hereinafter referred to as Codex standards), where it will promote honesty and fair dealing in the consumers' interest.

All FDA regulations concerning human food were reorganized under

Subchapter B—Food for Human Consumption, published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302). For the convenience of the reader, the following table lists the former designation of the sections in recodified subchapter B that would be affected by this proposal.

New section:	Old section:
133.3	19.499
133.106	19.565
133.113	19.500
133.114	19.502
133.116	19.503
133.138	19.555
133.142	19.560
133.149	19.543
133.152	19.575
133.181	19.590
133.185	19.544
133.195	19.540
133.196	19.542

The Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, an auxiliary body of the Codex Alimentarius Committee, has submitted standards of identity for 34 natural cheeses to the United States for consideration of acceptance. The United States has 11 corresponding standards of identity, and the 9 included in this document cover the principal cheeses used in this country. The remaining two (cottage cheese and cream cheese) will not be considered in this document, because they are subject to further revision by Codex.

The Commissioner is taking the opportunity presented by the U.S. obligation to consider Codex standards for adoption to revise and update the standards of indentity for nine cheeses for which there are also Codex standards and to revise appropriate cross-referenced standards. The proposed revision is in keeping with recent vevisions of other standards of indentity to provide consumers with more complete ingredient information and to accommodate changes in the availability of ingredients as well as technological advances. The other 23 Codex standards will be considered for acceptance at a later date.

The Commissioner believes that the proposed changes will promote honesty and fair dealing in the interest of consumers and will facilitate international trade.

REVISION OF EXISTING STANDARDS OF IDENTITY

The Commissioner proposes that the standards of indentity for blue cheese (21 CFR 133.106), cheddar cheese (21 CFR 133.113), edam cheese (21 CFR 133.138), gouda cheese (21 CFR 133.142), gruyere cheese (21 CFR 133.149), limburger cheese (21 CFR 133.152), provolone cheese (21 CFR 133.181), samsoe cheese (21 CFR 133.185), and swiss and emmentaler cheese (21 CFR 133.195) and, by cross-reference, cheddar cheese for manufacturing (21 CFR 133.114), low sodium cheddar cheese (21 CFR 133.116), and swiss cheese for manufacturing (21 CFR 133.196) be revised. The revisions would (1) adopt the use of functional group designations for safe and suitable optional ingredients, where appropriate, and require that all ingredients be declared on the label by their common or usual name in accordance with part 101 (21 CFR part 101); (2) provide for the use of various forms of milk, nonfat milk, and cream; (3) require that a label declaration of fat content accompany the name of the food; and (4) delete the methods of analysis from the individual standards and establish a new § 133.5, titled "Methods of analysis."

The Commissioner is of the opinion that it is unduly restrictive to limit a manufacturer's choices of ingredients by specifically listing each optional ingredient that may be used. He believes that the use of functional group designation of optional ingredients benefits the consumer by allowing a manufacturer to select less expensive or more readily available ingredients that are equally appropriate for a functional purpose. Safety and suitability of ingredients chosen from a functional group are governed by the definition of "safe and suitable" in § 130.3(d) (21 CFR 130.3(d)) in conjunction with appropriate food additive regulations established under parts 170, 171 and 172 (21 CFR parts 170, 171 and 172). The Commissioner believes that the use of safe and suitable functional categories will minimize any future need to amend the standards to provide for additional specific ingredients. Therefore, wherever practicable, he is proposing the use of functional group terminology, established by § 170.3 (21 CFR 170.3), for safe and suitable optional ingredients.

The Commissioner is further proposing that various forms of milk, nonfat milk, and cream be provided for. The existing cheese standards specify that the basic ingredient for cheese manufacture is fluid cow's milk which may have the fat of solids-not-fat levels adjusted by removing milkfat or adding cream, nonfat milk, concentrated skim milk of nonfat dry milk. The Commissioner believes that, technologically, alternate forms of milk, nonfat milk, and cream, i.e., concentrated, dried, and reconstituted forms, can be used to produce the same cheese as produced from fluid cow's milk. Further, he is of the opinion that provision for alternate forms of these milk products would be consistent with the provision in the existing standards for alternate manufacturing procedures that do not adversely affect the physical and chemical properties of the cheese. The Commissioner, therefore, is proposing to allow the use of specific classes of optional dairy ingredients, i.e., "milk," "cream," and "nonfat milk." He is also proposing definitions for the class designations "milk," "cream," and "nonfat milk" in the definitions section, § 133.3.

The Commissioner is aware of consumers' desire to be informed of the ingredients used in the foods they consume. In accordance with the policy set forth in § 101.6 (21 CFR 101.6), the Commissioner proposes to amend the standards of identity for the nine cheeses and the cross-referenced cheeses to require label declaration of optional ingredients in accordance with part 101. All ingredients in these cheeses are optional ingredients, with the exception of salt (except in the cross-referenced cheese, low sodium cheddar (§ 133.116)). While cheese must contain forms of milk, nonfat milk or cream, the manufacturer has the option of choosing, within specific classes of milk products, those forms he prefers to use. Section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)) specifically exempts cheese from any label declaration of optional artificial coloring. Salt, a mandatory ingredient in most of the cheeses, also is exempt from the ingredient statement requirement. However, the Commissioner urges manufacturers to declare the presence of these ingredients when used.

The standards of identity for blue cheese (§ 133.106), provolone cheese (§ 133.181), and swiss cheese (§ 133.195) provide for the use of the optional ingredient benzoyl peroxide to bleach milk products. These existing standards require that use of benzoyl peroxide be declared on the label by the statement "Milk bleached with benzoyl peroxide." Under this proposed revision, benzoyl peroxide is an optional ingredient and as such must be declared in the ingredient statement of the cheese. The Commissioner advises that its use maybe declared either as "benzoyl peroxide" or "—— bleached with benzoyl peroxide" with the appropriate name(s) of the milk products filling the blank.

The Commissioner is also proposing that the milkfat content of each cheese be declared, by weight, on the label. In conjunction with this, it is proposed that the minimum milkfat requirements in each of the subject cheese standards of identity be expressed on an "as is" basis, i.e., the percentage by weight of the finished food. Currently minimum milkfat requirements are expressed on a "dry basis" as a percentage of the solid matter in the cheese, i.e., excluding the moisture content. The Commissioner is of the opinion that such an

the total solids content as determined by the method "Total Solids, Method I—Official Final Action," section 16.032.

(4) *Protein content.* "Nitrogen—Official Final Action," section 16.036.

(5) *Protein efficiency ratio.* "Biological Evaluation of Protein Quality—Official Final Action," sections 43.183 through 43.187.

(6) Analyses for other nutrients shall be carried out in accordance with Association of Official Analytical Chemists (AOAC) methods when available or by other recognized methods.

(d) *Nomenclature.* (1) The name of the food that substitutes for, or that is made in semblance of, a standardized milk or cream food and that complies with the definition for such food as set forth in paragraph (a) of the section shall be "——— substitute," the blank being filled in with the name of the food simulated, e.g., "lowfat milk substitute." The name of the food shall be accompanied by a descriptive phrase identifying the nonmilk ingredients used to replace the milk components.

(2) When required by the standard of identity for the food simulated, the name of the milk or cream substitute shall be accompanied by a declaration of the amount of fat, e.g., "——— percent fat," or "——— percent vegetable and milkfat," as appropriate, the blank being filled in with the whole number closest to the actual fat content of the food.

(3) If vitamins A and/or D are added to a milk food substitute at levels above those required by paragraph (b)(1) of this section, the name of the milk food substitute shall be accompanied by a phrase such as "vitamin A" or "vitamin A added," or "vitamin D" or "vitamin D added," or "vitamins A and D," or "vitamins A and D added," as appropriate. The word "vitamin" may be abbreviated "vit." Vitamin A and/or D requirements indicated in paragraph (b)(1) of this section by a footnote also cause the name of that food to be accompanied by one of the applicable phrases in this subparagraph.

(4) The name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The declaration of the amount of fat, when applicable, and the descriptive phrase shall be in letters not less than one-half the height of the largest type appearing in the name of the food.

(5) The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring, in the manner specified in § 101.22 of this chapter.

(6) If the food has been ultra-pasteurized, the word "ultrapasteurized" shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the largest type appearing in such name.

(e) *Label declaration.* Each of the ingredients used shall be declared on the label as required by the applicable sections of part 101 of this chapter.

2. Part 133 is amended by adding a new § 133.300 as follows:

§ 133.300 Cheese substitutes.

(a) *Description.* A cheese substitute is a food made in semblance of a standardized cheese variety, process cheese, cheese product, or other standardized foods made of cheese in which safe and suitable nonmilk ingredients replace all or part of the nutritive milk components normally found in the food being simulated. The cheese substitute shall possess similar physical and organoleptic properties and may meet the fat and moisture requirements set forth in the standard of identity for the food being simulated where such requirements exist. In addition, the cheese substitute shall meet the requirements set out in paragraph (b) of this section.

(b) *Nutritional equivalency.* A cheese substitute that is nutritionally inferior to the cheese or cheese product being simulated shall be labeled "imitation" as required by § 101.3 of this chapter. For purposes of this chapter, a cheese substitute is considered to be nutritionally equivalent to the food being simulated if it meets all of the following applicable requirements.

(1) *Nutrient profile for substitutes simulating cheese and cheese products.* (i) Nutrient profile for substitutes simulating cream cheese and neufchatel cheese:

	Percent by weight
Minimum protein content	9

	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	90
Riboflavin, milligrams	0.02
Vitamin A, international units	146.0

(ii) Nutrient profile for substitutes simulating cottage cheese, lowfat cottage cheese, and dry curd cottage cheese:

	Percent by weight
Minimum protein content	14

	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	4.0
Potassium, milligrams	6.0
Zinc, milligrams	.03
Riboflavin, milligrams	.01
Pantothenic Acid, milligrams	.02
Vitamin B_6, milligrams	.01
Folacin, micrograms	1.0
Vitamin B_{12}, micrograms	.05

(iii) Nutrient profile for substitutes simulating other natural cheeses such as cheddar, swiss, mozzarella, blue, and edam:

	Percent by weight
Minimum protein content	24

	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	23.0
Phosphorus, milligrams	19.0
Zinc, milligrams	.10
Riboflavin, milligrams	.02
Vitamin B_{12}, micrograms	.05
Vitamin A, international units	39.0

(iv) Nutrient profile for substitutes simulating process cheese and cheese products:

(Percent by weight)

Foods:	Minimum protein content
Process cheese substitute	23
Cheese product substitute	16

	Amount per gram of protein
Other nutrients:	
Calcium, milligrams	30.0
Phosphorus, milligrams	30.0
Potassium, milligrams	14.0
Zinc, milligrams	.15
Riboflavin, milligrams	.02
Pantothenic acid, milligrams	.03
Vitamin B_{12}, micrograms	.05
Vitamin A, international units	44.0

(2) The zinc requirement is doubled if the protein component of the cheese substitute is obtained primarily from vegetable protein products.

(3) The protein efficiency ratio (PER) of the protein component of the cheese or cheese product substitute shall be at least 100 percent of that of casein.

(4) Compliance with the requirements for other nutrients in this paragraph will be deemed to have been met if reasonable overages of vitamins and minerals, within limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the life of the food under customary conditions of distribution and storage.

(c) *Method of analysis.* The following reference methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975.[1]

(1) *Fat content.* "Fat—Official Final Action," section 16.230.

(2) *Moisture content.* "Moisture—Official Final Action," sections 16.217, 16.218, or 16.219 through 16.222, as appropriate.

(3) *Protein content.* "Nitrogen—Official Final Action," section 16.226.

(4) *Protein efficiency ratio.* "Biological Evaluation of Protein Quality—Official final Action," sections 43.183 through 43.187.

(5) Analyses for other nutrients shall be carried out in accordance with Association of Official Analytical Chemists (AOAC) methods when

available or by other recognized methods.

(d) *Nomenclature.* (1) The name of the food that substitutes for or that is made in semblance of a standardized cheese variety, process cheese, cheese product, or other standardized food made of cheese and that complies with the definition for such food set forth in paragraph (a) of this section shall be "——— substitute," the blank being filled in with the name of the food simulated as provided for in the standard of identity for that food, e.g., "cheddar cheese substitute," or "process swiss cheese substitute." The name of the food shall be accompanied by a descriptive phrase identifying the nonmilk ingredients, if used in the food, to replace the milk protein. The name of the food shall also be accompanied by a declaration of the amount and type(s) of fat in the cheese substitute, e.g., "——— percent vegetable fat and milkfat," the blank being filled in with the whole number closest to the actual fat content of the food.

(2) In cases where the fat and moisture content requirements of the standardized food being simulated are optionally variable, e.g., in process cheese products, or when the fat and moisture contents of the cheese substitute vary from that the standardized food simulated, and the food complies with the definition for such food as required in paragraph (a) of this section, the name of the food shall be "——— product substitute," the blank being filled in with the name of the food simulated, e.g., "process cheddar cheese product substitute." The name of the food shall be accompanied by a descriptive phrase identifying any nonmilk ingredients used in the food to replace the milk protein. The name of the food shall also be accompanied by a declaration of the amount and type(s) of fat in the cheese product substitute, e.g., "——— percent vegetable fat and milkfat," the blank being filled in with the whole number closest to the actual fat content of the food.

(3) The use of the term "pasteurized" in the name of process cheese substitutes and the terms "pasteurized" and "process" in the name of cheese product substitutes is optional.

(4) The name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The declaration of fat content, when required, and the descriptive phrase shall be in letters not less than one-half the height of the largest type appearing in the name of the food.

(5) The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring, including smoke and substances prepared by condensing or precipitating wood smoke, and any characterizing spice in the manner specified in § 101.22 of this chapter.

(6) The word "cheese" or any varietal name of a cheese or food made of cheese shall not appear on the label except as permitted by this section. Words or phrases suggesting possible uses of the cheese substitute, such as "for pizza" or "for salads," or descriptive phrases such as "sliced" or "sharp," may appear on the label, but shall be separate from the name of the food.

(e) *Label declaration.* The common or usual name of each of the ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

Interested persons may, on or before November 27, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket numbers found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: September 8, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

NOTE.—Incorporation by reference approved by the Director of the Office of the Federal Register on March 11, 1976, and is on file in the Federal Register Library.

[FR Doc. 78-25816 Filed 9-18-78; 8:45 am]

[4110-03]

[21 CFR Part 133]

[Docket No. 77P-0071]

SKIM MILK CHEESE FOR MANUFACTURING

Proposal To Amend Identity Standards; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on a proposed rule that would amend the standards of identity for skim milk cheese for manufacturing. This action is based on requests from industry. The reopened comment period will run concurrently with the comment periods for two proposed rules published elsewhere in this issue of the FEDERAL REGISTER: The proposed rule to establish standards of identity for milk, cream, and cheese substitutes and the proposed rule to revise the standards of identity for nine natural cheeses based on the international standards for these foods.

DATE: New deadline for comments November 27, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of October 4, 1977 (42 FR 53979), the Commissioner of Food and Drugs proposed to amend the identity standard for skim milk cheese for manufacturing. Comments were to be filed on the proposal by December 5, 1977.

Subsequently, the Commissioner received several requests from industry for extension of the comment period on the proposal. In view of two other related proposals the agency planned to issue, the Commissioner decided not to extend the comment period at that time but rather, to reopen the comment period on publication of the new proposals. These new proposals which would: (1) establish standards of identity for milk, cream, and cheese substitutes (docket No. 75P-0121), and (2) revise the standards of identity for nine natural cheeses based on a review of the recommended international standards for these foods (docket No. 77N-0331), are published elsewhere in this issue of the FEDERAL REGISTER.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))), and under authority delegated to the Commissioner (21 CFR 5.1), the comment period on the proposal for skim milk cheese for manufacturing is hereby reopened and shall run concurrently with the comment periods established for the proposals for milk, cream, and cheese substitutes and for the nine natural cheeses.

Interested persons may, on or before November 27, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 8, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-25817 Filed 9-18-78; 8:45 am]

[4110-03]

[21 CFR Part 133]

[Docket No. 77P-0070]

PASTEURIZED PROCESS CHEESE AND CHEESE PRODUCTS

Proposed Revision of Definition and Standards of Identity; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on a proposed rule that would revise the standards of identity for pasteurized process cheese and pasteurized process cheese products. This action is based on requests from industry. The reopened comment period will run concurrently with the comment periods for two proposed rules published elsewhere in this issue of the FEDERAL REGISTER: The proposed rule to establish standards of identity for milk, cream, and cheese substitutes and the proposed rule to revise the standards of identity for nine natural cheeses based on the international standards for these foods.

DATE: New deadline for comments November 27, 1978.

ADDRESS: Written comments to Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of October 4, 1977 (42 FR 53970), the Commissioner of Food and Drugs proposed revision of the standards of identity for pasteurized process cheese and other pasteurized process cheese products. Comments were to be filed on the proposal by January 3, 1978.

Subsequently, the Commissioner received several requests from industry for extension of the comment periods on the proposal. In view of two other related proposals the agency planned to issue, the Commissioner decided not to extend the comment period at that time but rather, to reopen the comment period on publication of the new proposals. These new proposals which would: (1) establish standards of identity for milk, cream, and cheese substitutes (docket No. 75P-0121), and (2) revise the standards of identity for nine natural cheeses based on a review of the recommended international standards for these foods (docket No. 77N-0331), are published elsewhere in this issue of the FEDERAL REGISTER.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), the comment period on the proposal for pasteurized process cheese and other pasteurized process cheese products is hereby reopened and shall run concurrently with the comment periods established for the proposals for milk, cream, and cheese substitutes and for the nine natural cheeses.

Interested persons may, on or before November 27, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal.

Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the hearing of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 8, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-25820 Filed 9-18-78; 8:45 am]

[4110-03]

[21 CFR Part 133]

[Docket No. 77N-0331]

CHEESES AND RELATED CHEESE PRODUCTS

Proposal Based on International Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would revise and update the standards of identity for nine cheese and appropriate cross-referenced standards. In addition, amendments to the nine cheese standards are proposed to bring them into closer conformance with international standards recommended by the Codex Alimentarius Commission. Any regulation issued on the basis of this proposal will reflect the Commissioner's consideration of relevant information presented at the food labeling hearings announced in the FEDERAL REGISTER on June 9, 1978.

DATES: Comments by November 27, 1978. Proposed compliance for products initially introduced into interstate commerce: One year after the date of issuance of a regulation.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing to revise the standards of identity for blue cheese, cheddar cheese, edam cheese, gouda cheese, gruyere cheese, limburger cheese, provolone cheese, samsoe cheese, swiss cheese, and the cross-referenced cheeses—cheddar cheese for manufacturing, low sodium cheddar cheese, and swiss cheese for manufacturing. The purpose of these revisions is to: (1) Provide for full ingredient declaration; (2) relax recipe requirements to permit use of safe and suitable ingredients that do not change the basic identity of the food or adversely affect the physical or chemical characteristics; and (3) amend compositional requirements to be consistent with the "recommended international standards" (hereinafter referred to as Codex standards), where it will promote honesty and fair dealing in the consumers' interest.

All FDA regulations concerning human food were reorganized under

Subchapter B—Food for Human Consumption, published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302). For the convenience of the reader, the following table lists the former designation of the sections in recodified subchapter B that would be affected by this proposal.

New section:	Old section:
133.3	19.499
133.106	19.565
133.113	19.500
133.114	19.502
133.116	19.503
133.138	19.555
133.142	19.560
133.149	19.543
133.152	19.575
133.181	19.590
133.185	19.544
133.195	19.540
133.196	19.542

The Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, an auxiliary body of the Codex Alimentarius Committee, has submitted standards of identity for 34 natural cheeses to the United States for consideration of acceptance. The United States has 11 corresponding standards of identity, and the 9 included in this document cover the principal cheeses used in this country. The remaining two (cottage cheese and cream cheese) will not be considered in this document, because they are subject to further revision by Codex.

The Commissioner is taking the opportunity presented by the U.S. obligation to consider Codex standards for adoption to revise and update the standards of indentity for nine cheeses for which there are also Codex standards and to revise appropriate cross-referenced standards. The proposed revision is in keeping with recent vevisions of other standards of indentity to provide consumers with more complete ingredient information and to accommodate changes in the availability of ingredients as well as technological advances. The other 23 Codex standards will be considered for acceptance at a later date.

The Commissioner believes that the proposed changes will promote honesty and fair dealing in the interest of consumers and will facilitate international trade.

REVISION OF EXISTING STANDARDS OF IDENTITY

The Commissioner proposes that the standards of indentity for blue cheese (21 CFR 133.106), cheddar cheese (21 CFR 133.113), edam cheese (21 CFR 133.138), gouda cheese (21 CFR 133.142), gruyere cheese (21 CFR 133.149), limburger cheese (21 CFR 133.152), provolone cheese (21 CFR 133.181), samsoe cheese (21 CFR 133.185), and swiss and emmentaler cheese (21 CFR 133.195) and, by cross-reference, cheddar cheese for manufacturing (21 CFR 133.114), low sodium cheddar cheese (21 CFR 133.116), and swiss cheese for manufacturing (21 CFR 133.196) be revised. The revisions would (1) adopt the use of functional group designations for safe and suitable optional ingredients, where appropriate, and require that all ingredients be declared on the label by their common or usual name in accordance with part 101 (21 CFR part 101); (2) provide for the use of various forms of milk, nonfat milk, and cream; (3) require that a label declaration of fat content accompany the name of the food; and (4) delete the methods of analysis from the individual standards and establish a new § 133.5, titled "Methods of analysis."

The Commissioner is of the opinion that it is unduly restrictive to limit a manufacturer's choices of ingredients by specifically listing each optional ingredient that may be used. He believes that the use of functional group designation of optional ingredients benefits the consumer by allowing a manufacturer to select less expensive or more readily available ingredients that are equally appropriate for a functional purpose. Safety and suitability of ingredients chosen from a functional group are governed by the definition of "safe and suitable" in § 130.3(d) (21 CFR 130.3(d)) in conjunction with appropriate food additive regulations established under parts 170, 171 and 172 (21 CFR parts 170, 171 and 172). The Commissioner believes that the use of safe and suitable functional categories will minimize any future need to amend the standards to provide for additional specific ingredients. Therefore, wherever practicable, he is proposing the use of functional group terminology, established by § 170.3 (21 CFR 170.3), for safe and suitable optional ingredients.

The Commissioner is further proposing that various forms of milk, nonfat milk, and cream be provided for. The existing cheese standards specify that the basic ingredient for cheese manufacture is fluid cow's milk which may have the fat of solids-not-fat levels adjusted by removing milkfat or adding cream, nonfat milk, concentrated skim milk of nonfat dry milk. The Commissioner believes that, technologically, alternate forms of milk, nonfat milk, and cream, i.e., concentrated, dried, and reconstituted forms, can be used to produce the same cheese as produced from fluid cow's milk. Further, he is of the opinion that provision for alternate forms of these milk products would be consistent with the provision in the existing standards for alternate manufacturing procedures that do not adversely affect the physical and chemical properties of the cheese. The Commissioner, therefore, is proposing to allow the use of specific classes of optional dairy ingredients, i.e., "milk," "cream," and "nonfat milk." He is also proposing definitions for the class designations "milk," "cream," and "nonfat milk" in the definitions section, § 133.3.

The Commissioner is aware of consumers' desire to be informed of the ingredients used in the foods they consume. In accordance with the policy set forth in § 101.6 (21 CFR 101.6), the Commissioner proposes to amend the standards of identity for the nine cheeses and the cross-referenced cheeses to require label declaration of optional ingredients in accordance with part 101. All ingredients in these cheeses are optional ingredients, with the exception of salt (except in the cross-referenced cheese, low sodium cheddar (§ 133.116)). While cheese must contain forms of milk, nonfat milk or cream, the manufacturer has the option of choosing, within specific classes of milk products, those forms he prefers to use. Section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)) specifically exempts cheese from any label declaration of optional artificial coloring. Salt, a mandatory ingredient in most of the cheeses, also is exempt from the ingredient statement requirement. However, the Commissioner urges manufacturers to declare the presence of these ingredients when used.

The standards of identity for blue cheese (§ 133.106), provolone cheese (§ 133.181), and swiss cheese (§ 133.195) provide for the use of the optional ingredient benzoyl peroxide to bleach milk products. These existing standards require that use of benzoyl peroxide be declared on the label by the statement "Milk bleached with benzoyl peroxide." Under this proposed revision, benzoyl peroxide is an optional ingredient and as such must be declared in the ingredient statement of the cheese. The Commissioner advises that its use maybe declared either as "benzoyl peroxide" or "—— bleached with benzoyl peroxide" with the appropriate name(s) of the milk products filling the blank.

The Commissioner is also proposing that the milkfat content of each cheese be declared, by weight, on the label. In conjunction with this, it is proposed that the minimum milkfat requirements in each of the subject cheese standards of identity be expressed on an "as is" basis, i.e., the percentage by weight of the finished food. Currently minimum milkfat requirements are expressed on a "dry basis" as a percentage of the solid matter in the cheese, i.e., excluding the moisture content. The Commissioner is of the opinion that such an

expression of fat content has little or no meaning to the average consumer. Moreover, the actual fat content of a cheese may vary from the minimum, upward. The Commissioner is of the opinion that the phrase "contains —— % fat," based on the weight of the finished food including moisture, with the whole number nearest the actual milkfat content of the cheese filling the blank and accompanying the name of the food, would more fully inform the consumer about the food.

Regarding other changes in the existing standards, the Commissioner is proposing to delete the definition of "safe and suitable" from the "Definitions" section (§ 133.3) and add definitions for "pasteurized" and "ultrapasteurized," in addition to the definitions for classes of dairy ingredients named above. "Safe and suitable" is already defined in § 130.3(d). Definition of the other terms he proposes to include in § 133.3 would eliminate the needless repetition of each term in each standard of identity. For the same reason, the Commissioner proposes that a new § 133.5, titled "methods of analysis" be established. This section will include the methods of analysis for milkfat, moisture, and phosphatase contents referred to in each of the standards. The other standards in part 133 will be revised to refer to §§ 133.3 and 133.5 at a later date.

The Commissioner is also proposing that all cheese standards of identity included in this proposal provide for a mixiumum allowable phenol equivalent value. The existing standards of identity for blue cheese (§ 133.106), gruyere cheese (§ 133.149), limburger cheese (§ 133.152), samsoe cheese (§ 133.185), and swiss cheese (§ 133.195) do not include a specific maximum allowable phenol equivalent value. The standards for the other four cheeses do include a specific value. The phenol equivalent value indicates whether proper pasturization procedures were followed when a cheese purports to be made from pasteurized milk products. A phenol equivalent value above the maximum allowed for a specific cheese that claims to be made from pasteurized milk products might indicate that improper pasteurization times and/or temperatures were used. The phenol equivalent value is determined by the "Fesidual Phosphatase" test described in section 16.245 of the 12th edition of "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC). This entire test procedure is now included in the standard of identity for cheddar cheese (§ 133.113). When the new § 133.5, Methods of analysis, is established, the procedure will be removed from the cheddar cheese standard and replaced with a reference to the AOAC method in § 133.5. All cheese standards included in this proposal that now refer to the cheddar cheese standard for the method of determining the phenol equivalent value will be amended to refer to the new § 133.5. All the cheese standards not covered by this proposal will be similarly amended in the future.

The AOAC procedure also includes a table of cheese varieties and types and corresponding phenol equivalent values. These values were established from data obtained after the hearings to establish standards of identity for cheeses and were first published in the 6th edition of "Official Methods of Analysis of the Association of Official Agricultural Chemists" in 1950. From 1950 to 1975 the values were considered experimental by the AOAC, and they were constantly reviewed and updated. In the 12th edition of the AOAC (1975) the term "experimental" was dropped from the values, indicating that these values are recognized as valid. Therefore, the Commissioner is proposing that the phenol equivalent values from the AOAC be accepted for those five cheeses for which the standards that do not now include maximum allowable phenol equivalent values and to retain the values in the standards that do contain them since these values already correspond to the AOAC values.

To ensure that cheeses made from unpasteurized milk products are cured for the length of time specified by each standard of identity, the Commissioner points out that, in accordance with § 101.100(f) (21 CFR 101.100(f)), uncured bulk cheese must be clearly marked with the date the curing process begins.

The Commissioner is further proposing that the provision for hydrogen peroxide/catalase treatment of milk be eliminated from the standards of identity for cheddar cheese (§ 133.113), swiss cheese (§ 133.195), and the cross-referenced cheeses—cheddar cheese for manufacturing (§ 133.114), low sodium cheddar cheese (§ 133.116), and swiss cheese for manufacturing (§ 133.196). He is not aware that this method is in common use and particularly asks for comment on this point.

The standard of identity for provolone cheese (§ 133.181) states that provolone cheese may be smoked, or it may have added to it a clear aqueous solution prepared by condensing or precipitating wood smoke in water. If the food is not smoked, the standard requires that the name of the food include the words "not smoked." If a clear aqueous solution of wood smoke is added, the words "with added smoke flavoring" must immediately follow the name.

The Commissioner is retaining the provision for optional smoking, but is deleting the provision for the addition of smoke flavor since the smoke-flavored cheese would be subject to the requirements of § 133.193 Spiced, flavored standardized cheeses (21 CFR 133.193). Further, he is proposing to delete the words "not smoked" when the food is not smoked and instead is proposing that, if the food is smoked, the work "smoked" shall accompany the name of the food.

Since the name "pasta filata" more correctly refers to a class of cheeses than to a specific variety, the Commissioner is proposing to delete the alternative name "pasta filata" from the standard of identity for provolone cheese (§ 133.181).

Certain standards of identity subject to this proposal do not provide for specific dimensions, weights, or shapes of the cheese, or for coatings that may be applied to the surface before curing. The standards for blue cheese, edam cheese, gouda cheese, and provolone cheese contain provisions for coatings, shapes, or both, while the standard for samsoe cheese provides for specific shape, weight, and dimensions. Traditionally, such cheeses have been produced in distinctive shapes or sizes, and/or have been covered with paraffin of one color or another. The Commissioner recognizes that some consumers may identify the type of cheese by its dimensions, weight, shape, or coating color, but he believes that the name and ingredient labeling requirements of the standards assure the consumer of being adequately informed of the variety of cheese. Therefore, the Commissioner is proposing to remove provisions for coatings and/or cheese shapes from the standards of identity for blue cheese, edam cheese, and gouda cheese; the provisions for specific shapes from the standard of identity for provolone cheese; and the provisions for shape, weight, and dimensions form the standard of identity for samsoe cheese. These changes will allow the use of new manufacturing and packaging techniques as they are developed.

The existing standards of identity for gruyere cheese and swiss cheese provide for the optional use of propionic acid-producing bacterial cultures. The Codex standards for emmentaler cheese (C-9) and gruyere cheese (C-10) require the addition of propionic acid-producing bacterial cultures.

The Commissioner is of the opinion that this type of culture is essential for proper eye-formation characteristic of these two cheese varieties. He, therefore, proposes that propionic acid-producing bacterial cultures, in addition to lactic acid-producing bacterial cultures, be required in the manufacture of gruyere cheese and swiss cheese.

In the cross-referenced standard for low sodium cheddar cheese, the Commissioner is proposing to delete paragraph (b), which prohibits the use of sodium sorbate. He considers this prohibition to be unnecessary since the low sodium cheddar cheese standard contains a maximum sodium limit.

CODEX ALIMENTARIUS RECOMMENDED INTERNATIONAL STANDARDS

The United States, as a member nation of FAO/WHO, is under treaty obligation to consider acceptance of all Codex standards. The rules of procedure of the Codex Alimentarius Commission permit acceptance of a recommended standard in one of three ways: Full acceptance; target acceptance; or acceptance with specified deviations. A participating country which concludes that it cannot accept the standard in full is requested to indicate the ways in which its requirements differ from the recommended international standard. Member nations of the Codex Alimentarius Commission are requested to notify the Technical Secretary, Committee on the Code of Principles Concerning Milk and Milk Products, Animal Production and Health Division, FAO, Rome, Italy, of their decision. When a sufficient number of governments accept these standards, the Secretariat of the Committee will notify the Codex Alimentarius Commission and request the publication of the accepted standards as worldwide standards by the Commission.

The United States is now considering acceptance of Codex standards of identity for nine natural cheeses. The nine Codex standards and corresponding U.S. standards are as follows:

	Codex	United States
Blue-veined	C-32	133.106
Cheddar	C-1	133.113
Edam	C-4	133.138
Gouda	C-5	133.142
Gruyere	C-10	133.149
Limburger	C-12	133.152
Provolone	C-15	133.181
Samsoe	C-7	133.185
Swiss or Emmentaler	C-9	133.195

Based on the treaty obligation and the policy set forth in § 130.6 (21 CFR 130.6), the Commissioner proposes to amend the compositional requirements of the standards of identity for these nine cheeses, wherever practicable, to effect consistency with the Codex standards.

The Codex standards include certain labeling requirements that are not considered a part of food standards of identity under section 401 of the Federal Food, Drug, and Cosmetic Act. Such requirements are authorized by other sections of the act, the Fair Packaging and Labeling Act, and regulations promulgated thereunder in part 101 (21 CFR Part 101) and are applicable to all products entered into interstate commerce is the United States.

The Codex standards also reference specific methods of sampling in FAO/WHO Standard B-1, "Sampling Methods for Milk and Milk Products," paragraphs 2 and 7 (CAC/M1-1973).[1] Such sampling methods are not specifically designated in the U.S. standards of identity for cheeses and cheese products. However, these FAO/WHO sampling methods have been published in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th ed., 1975, the source of the referenced methods of analysis for cheese and cheese products contained in the U.S. standards of identity.

Although the individual Codex standards are similar to corresponding U.S. standards, including proposed revisions, significant variations do exist in several instances which merit discussion. The texts of the Codex Recommended International Standards under consideration follow:

Appendix V-3.

STANDARD NO. C-32, STEP 7

Submitted to Governments for Acceptance

INTERNATIONAL STANDARD FOR CERTAIN BLUE-VEINED CHEESES

1. *Scope.* This standard applies to the following varieties of blue-veined cheese: Danablu, Edelpilzkase, Adelost, Blue Cheese.

2. *Depositing countries:* Denmark, Federal Republic of Germany, Sweden, United States of America.

3. *Raw Materials.*

3.1 Kind of milk: Cow's milk.

3.2 Authorized additions:

3.2.1 Necessary additions: Cultures of harmless lactic acid producing bacteria (starter); rennet or other suitable coagulating enzymes; sodium chloride; and cultures of *penicillium roqueforti.*

3.2.2 Optional additions: Water; calcium chloride, maximum 200 mg/kg of the milk used; *beta*-carotene maximum 600 mg/kg of cheese; chlorophyll copper complex; riboflavin (lactoflavin); and harmless preparations of enzymes capable of aiding in the curing or flavor development (weight of solids of such substance added, not to exceed 0.1 percent of weight of milk used).

4. *Principal characteristics of the cheese ready for consumption.*

4.1 Type.

4.1.1 Consistency: Semi-hard to soft.

4.1.2 Short description: Blue-veined semi-hard cheese mainly ripened by internal mold growth.

4.2 Shapes: (a) Flat cylindrical; (b) flat square; and (c) flat rectangular.

4.3 Dimensions and weights.

4.3.1 Dimensions: Height: approximately 8 to 15 cm.

4.3.2 Weights: 2 to 6 kg.

4.3.2.1 Weights of "Danablu": Flat cylindrical: 2.75 to 3.25 kg; flat square and flat rectangular: approximately 4 kg.

4.4 Rind.

4.4.1 Consistency: No actual rind, but a semihard surface.

4.4.2 Appearance: Greasy to dry.

4.4.3 Color: Whitish.

4.5 Body.

4.5.1 Texture: Suitable for cutting and spreading.

4.5.2 Color: White to yellowish with blue-green veins of mold.

4.6 Holes.

4.6.1 Distribution: Scarce.

4.6.2 Shape: Irregular.

4.6.3 Size: Various.

4.6.4 Appearance: With blue-green molds.

4.7/4.8 Minimum fat content in dry matter and maximum moisture content:

[Percent]

	A	B	C
Minimum fat in dry matter	50	60	45
Maximum moisture content	48	48	55
Minimum dry matter content	52	52	45

The minimum fat content in dry matter and maximum moisture content for Danablu are restricted to those given under A and B.

4.9 Other principal characteristics: Cheese has distinct piquant flavor resulting from fat breakdown. Not to be sold to the consumer at less than 6 weeks of age.

METHOD OF MANUFACTURE

5.1 Method of coagulation: Rennet or other suitable coagulating enzymes; addition of a lactic acid starter.

5.2 Heat treatment: None, or slightly heated after cutting, ladled out in bags or molds.

5.3 Fermentation procedure: Lactic acid and mold fermentation.

5.4 Maturation procedure: Pierced with needles to develop growth of molds; stored humid at a temperature from 2° to 12° C; some surface mold.

5.5 Other principal characteristics: None.

SAMPLING AND ANALYSIS

6.1 Sampling: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clause 7.2(b), "Sampling by means of a trier"; reference is made to clauses 7.2.2.3 and 7.2.2.5.

6.2 Determination of fat content: According to FAO/WHO Standard B.3, "Determination of the Fat Content of Cheese and Processed Cheese Products."

MARKING AND LABELLING

Only cheese conforming with this standard may be designated: (a) "Danablu," or "Edelpilzkase," or "Blue Cheese," or "Adelost," or (b) a combination of the designation "Blue-veined cheese" with the designations given in (a), e.g., "Adelost—blue-veined cheese."

It shall be labeled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese" except that Danablu not produced in the country of origin must be marked with the name of the producing country even when sold in the home market.

The cheese mentioned under "B" and "C" in 4.7/4.8 may be designated as mentioned under (a) or (b) above provided that the designation is accompanied by the prefix or

[1] "Code of Principles Concerning Milk and Milk Products, International Standards and Standard Methods of Sampling and Analysis for Milk Products," 7th ed.

suffix corresponding to the fat percentage, e.g., "Edelpilzkase 45%."

The use of food colors shall be indicated on the label.

STANDARD No. C-1 (1966)

INTERNATIONAL INDIVIDUAL STANDARD FOR CHEDDAR

1. *Designation of cheese:* Cheddar.

2. *Depositing country:* United Kingdom (country of origin).

3. *Raw materials.*

3.1 Kind of milk: Cow's milk.

3.2 Authorized additions.

3.2.1 Necessary additions: Cultures of harmless lactic acid producing bacteria (starter); rennet or other suitable coagulating enzymes; and sodium chloride.

3.2.2 Optional additions: Calcium chloride, maximum 200 mg/kg of the milk used; annattoo* and beta carotene, singly or in combination, maximum 600 mg/kg of cheese; sorbic acid and its sodium and potassium salts, maximum 1,000 mg/kg calculated as sorbic acid; a preparation of safe and suitable enzymes of animal or plant origin capable of aiding in the curing or development of flavor of Cheddar cheese may be added during the procedure, in such quantity that the weight of the solid of such preparation is not more than 1,000 mg/kg of the milk used.

4. *Principal characteristics of the cheese ready for consumption.*

4.1 Type (consistency): Hard pressed.

4.2 Shape: Cylindrical or block (cuboid).

4.3 Dimensions and weights: Various.

4.4 Rind.

4.4.1 Consistency: Hard.

4.4.2 Appearance: Smooth, may be coated with wax or cloth wrapped.

4.4.3 Color: Pale straw through dark straw to orange; rindless blocks may be in airtight, flexible film.

4.5 Body.

4.5.1 Texture: Firm, smooth, and waxy.

4.5.2 Color: Uniform, pale straw through dark straw to orange.

4.6 Holes: Gas holes should be absent; none to few mechanical openings.

4.7 Minimum fat content in dry matter: 48 percent.

4.8 Maximum moisture content: 39 percent. Minimum dry matter content: 61 percent.

4.9 Other principal characteristics: Normally consumed mild from 3 months or mature up to 12 months or more. Flavor typical of the variety, varying in intensity from mild to sharp and typical of ripening controlled by lactic acid producing bacteria.

5. *Method of manufacture.*

5.1 Method of coagulation: Rennet or other suitable coagulating enzymes.

5.2 Heat treatment.

5.2.1 Heat treatment of the milk: Milk for cheesemaking may be raw, heat treated or pasteurized to 161° F (71.7° C) for 15 seconds.

5.2.2 Heat treatment of the coagulum: The curd is subsequently cut and scalded to 100°–106° F (37.5°–40° C) depending on the season.

5.3 Fermentation procedure: 1.0-2.5 percent lactic starter is added to the milk, to give a ripening period of up to 2 hours before rennetting.

5.4 Maturation procedure: After scalding the curd, it is stirred until slight acid development, customarily 0.18 or 0.19 percent expressed as lactic acid, is reached.

The whey is run off and the process of "cheddaring" (which may take place in a separate container) continues, during which the curd is cut into blocks, which are turned and progressively piled. During this process the curd is kept warm and the drainage of whey, together with the development of acidity, results in the curd becoming compressed, smooth, and elastic. When a substantial acidity which may reach 0.90 percent expressed as lactic acid has been reached, the curd is milled.

About 2.0-2.5 percent salt is added to the curd to give 1.5-1.8 percent salt in the cheese.

The curd is then mixed and molded. The cheeses are stored and subsequently graded. They may mature in store for 3-12 months according to temperature of the store and degree of maturity required.

6. *Sampling and analysis.*

6.1 Sampling: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," paragraph 7, "Sampling of Cheese."

6.2 Determination of fat content: According to FAO/WHO Standard B.3, "Determination of the Fat Content of Cheese and Processed Cheese Products."

7. *Marking and labeling.* Only cheese conforming with this standard may be designated "Cheddar." It shall be labeled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese."

STANDARD No. C-4 (1966)

INTERNATIONAL INDIVIDUAL STANDARD FOR EDAM

1. *Designation of cheese:* Edam.[1]

2. *Depositing country:* The Netherlands (country of origin).

3. *Raw materials.*

3.1 Kind of milk: Cow's milk.

3.2 Authorized additions: Cultures of harmless lactic acid producing bacteria (starter); rennet or other suitable coagulating enzymes; sodium chloride; calcium chloride, maximum 200 mg/kg of the milk used; annatto* and beta carotene, singly or in combination maximum 600 mg/kg of cheese; sodium and potassium nitrate, maximum 200 mg/kg of the milk used**; and water.

4. *Principal characteristics of the cheese ready for consumption.*

4.1 Type (consistency): Semihard.

4.2 Shape: (a) Spherical, slightly flattened at the top and the bottom, and (b) flat block with square and/or rectangular side (not being a loaf) and with or without rind.

4.3 Dimensions and weights.

4.3.1 Dimensions: Depend on the shapes (4.2) and weights (4.3.2).

4.3.2 Weights: (a) Spherical (as under 4.2.a) 1.7 to 2.5 kg, and (b) flat block (as under 4.2.b) not less than 10 kg.

4.4 Rind.

4.4.1 Consistency: Hard.

4.4.2 Appearance: Dry, often coated with paraffin, wax, plastic, or a film of vegetable oil; coatings yellow or red.

4.4.3 Color: Yellowish.

4.5 Body.

4.5.1 Texture: Firm, suitable for cutting.

4.5.2 Color: Yellowish.

4.6 Holes.

4.6.1 Distribution: Few, all over the interior of the cheese, distributed regularly as well as irregularly.

4.6.2 Shape: More or less round.

4.6.3 Size: Varying from rice to pea.

4.6.4 Appearance: Not defined.

4.7 Minimum fat content in the dry matter: 40 percent.

4.8 Maximum moisture content: 46 percent. Minimum dry matter content: 54 percent.

4.9 Other principal characteristics: Edam cheese is not normally consumed before it is 5 weeks old.

5. *Baby Edam, loaf Edam, baby loaf Edam.*

5.1 *Baby Edam.* Small cheeses complying with the requirements for Edam cheese, except those under 4.3.2, 4.8, and 4.9, may be designated as "Baby Edam" provided they comply with the following:

5.1.1 Weights: From 0.840 to 1.100 kg.

5.1.2 Maximum moisture content: 47 percent. Minimum dry matter content: 53 percent.

5.1.3 Other principal characteristics: "Baby Edam" is not normally consumed before it is 3 weeks old.

5.2 *Loaf Edam.* Loaf-shaped cheeses, complying with the requirements for Edam cheese, except those under 4.2 and 4.3.2, may be designated as "Loaf Edam" provided they comply with the following:

5.2.1 Shape: Loaf shaped, length of the long side more than twice that of the shortest.

5.2.2 Weights: 2.0 to 5.0 kg.

5.3 *Baby Loaf Edam.* Loaf-shaped cheeses, complying with the requirements for Edam cheese, except those under 4.2, 4.3.2, 4.8, and 4.9 may be designated as "Baby Loaf Edam" provided they comply with the following:

5.3.1 Shape: Loaf shaped, length of the long side more than twice that of the shortest.

5.3.2 Weights: 0.400 to 1.100 kg.

5.3.3 Maximum moisture content: 47 percent. Minimum dry matter content: 53 percent.

5.3.4 Other principal characteristics: "Baby Loaf Edam" is not ready for consumption before it is 3 weeks old.

6. *Method of manufacture.*

6.1 Method of coagulation: Rennet or other suitable coagulating enzymes.

6.2 Heat treatment: The curd is heated with or without addition of warm water.

6.3 Fermentation procedure: Chiefly lactic acid.

6.4 Maturation procedure: Maturation during storage at a temperature preferably between 10° and 20° C.

6.5 Other principal characteristics: Salted in brine after manufacture.

7. *Sampling and analysis.*

7.1 Sampling: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clauses 7.2(a) and 7.2.1, "Sampling by cutting." To obtain the required representativity in the case of Edam in loaf form, special attention should be paid—when cutting the slice—to the proportions of rind, heart, etc.

7.2 Preparation of the sample: According to FAC/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clause 7.4, "Treatment of samples."

7.3 Determination of fat content: According to FAO/WHO Standard B.3, "Determi-

*Temporarily endorsed.

[1]Or such other synonym (e.g., Edamski) derived from the name Edam as will clearly indicate this variety.

*Temporarily endorsed.

**Subject to endorsement.

nation of the Fat Content of Cheese and Processed Cheese Products."

8. *Marking and labelling.* Only cheese conforming with this standard may be designated "Edam." It shall be labelled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese." The cheese mentioned under 5.1 may be designated "Edam," *Provided,* That the designation is accompanied by the prefix "Baby." The cheese mentioned under 5.2 may be designated "Edam," *Provided,* That the designation is accompanied by the prefix "Loaf." The cheese mentioned under 5.3 may be designated "Edam," *Provided,* That the designation is accompanied by the prefix "Baby Loaf."

STANDARD No. C-5 (1966)

INTERNATIONAL INDIVIDUAL STANDARD FOR GOUDA

1. *Designation of cheese:* Gouda.[1]

2. *Depositing country:* The Netherlands (country of origin).

3. *Raw materials.*

3.1 Kind of milk: Cow's milk.

3.2 Authorized additions: Cultures of harmless lactic acid producing bacteria (starter); rennet or other suitable coagulating enzymes; sodium chloride; water; calcium chloride, maximum 200 mg/kg of the milk used; annatto* and beta carotene, singly or in combination; maximum 600 mg/kg of cheese; sodium and potassium nitrate, maximum 200 mg/kg of the milk used.**

4. *Principal characteristics of the cheese ready for consumption.*

4.1 Type (consistency): Semihard.

4.2 Shape: (a) Cylindrical, with convex sides, curving smoothly into the flat top and bottom; the rate height/diameter varying from one-fourth to one-third; (b) flat block with square and/or rectangular sides (not being a loaf) and with or without rind; and (c) loaf, the length of the long side more than twice that of the shortest.

4.3 Dimensions and weights.

4.3.1 Dimensions: (a) Cylindrical, with convex sides (as under 4.2.a): Fixed by prescribed shape (4.2.a) and weights (4.3.2.a); (b) flat block (as under 4.2.b) fixed by prescribed shape (4.2.b) and weight (4.3.2.b); and (c) loaf (as under 4.2.c) fixed by prescribed shape (4.2.c) and weights (4.3.2.c).

4.3.2 Weights: (a) Cylindrical, with convex sides (as under 4.2.a): From 2.5 to 30 kg; (b) flat block (as under 4.2.b): Not less than 10 kg; and (c) loaf (as under 4.2.c): From 2.5 to 5 kg.

4.4 Rind.

4.4.1 Consistency: Hard.

4.4.2 Appearance: Dry or coated with either wax, a suspension of plastic, or a film of vegetable oil.

4.4.3 Color: Yellowish.

4.5 Body.

4.5.1 Texture: Firm, suitable for cutting.

4.5.2 Color: Straw colored.

4.6 Holes.

4.6.1 Distribution: From few to plentiful, all over the interior of the cheese, distributed regularly as well as irregularly.

4.6.2 Shape: More or less round.

4.6.3 Size: Varying from a pin's head to a pea.

4.6.4 Appearance: Not defined.

4.7 Minimum fat content in the dry matter: 48 percent.

4.8 Maximum moisture content: 43 percent. Minimum dry matter content: 57 percent.

4.9 Other principal characteristics: Gouda cheese is not normally consumed before it is 5 weeks old.

5. *Baby Gouda.* Small cheeses complying with the requirements for Gouda cheeses—except those under 4.2, 4.3, 4.8, and 4.9—may be designated as "Baby Gouda," provided they comply with the following:

5.1 Shape: Cylindrical with convex sides, curving smoothly into the flat top and bottom; the rate height/diameter is about one-half.

5.2 Dimensions and weights.

5.2.1 Dimensions: Fixed by prescribed shape (5.1) and weights (5.2.2).

5.2.2 Weights: From 0.180 to 1.500 kg.

5.3 Maximum moisture content: 45 percent. Minimum dry matter content: 55 percent.

5.4 Other principal characteristics: Baby Gouda is not normally consumed before it is 3 weeks old.

6. *Method of manufacture.*

6.1 Method of coagulation: Rennet or other suitable coagulating enzymes.

6.2 Heat treatment: The curd is heated with or without the aid of warm water.

6.3 Fermentation procedure: Chiefly lactic acid.

6.4 Maturation procedure: Maturation during storage at a temperature preferably between 10° and 20° C.

6.5 Other principal characteristics: Salted in brine after manufacture.

7. *Sampling and analysis.*

7.1 Sampling: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clauses 7.2(a) and 7.2.1, "Sampling by cutting." To obtain the required representativity in the case of Gouda in loaf form and other rectangular blocks, special attention should be paid—when cutting the slice—to the proportions of rind, heart, etc.

7.2 Preparation of the sample: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clause 7.4, "Treatment of samples."

7.3 Determination of fat content: According to FAO/WHO Standard B.3, "Determination of the Fat Content of Cheese and Processed Cheese Products."

8. *Marking and labeling.*

Only cheese conforming with this standard may be designated "Gouda." It shall be labeled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese." The cheese mentioned under 5 may be designated "Gouda," *Provided,* That the designation is accompanied by the prefix "Baby."

STANDARD No. C-10 (1967)

INTERNATIONAL INDIVIDUAL STANDARD FOR GRUYERE

1. *Designation of cheese:* Gruyere, Greyerzer, Gruviera.

2. *Depositing countries:* Switzerland and France (countries of origin).

3. *Raw materials.*

3.1 Kind of milk: Cow's milk.

3.2 Authorized additions.

3.2.1 Necessary additions: Cultures of harmless lactic acid producing bacteria (starter) and of proprionic acid-producing bacteria; rennet or other suitable coagulating enzymes; sodium chloride; and water.

3.2.2 Optional additions: None.

4. *Principal characteristics of the cheese ready for consumption.*

4.1 Type (consistency): Hard.

4.2 Shape: Round loaf or blocks.

4.3 Dimensions and weight.

4.3.1 Dimensions: Diameter: 40-65 cm, and height: 9-13 cm.

4.3.2 Weight: Minimum 20 kg.

4.4 Rind.

4.4.1 Consistency: Hard.

4.4.2 Appearance: Covered with smear.

4.4.3 Color: Golden yellow to brown.

4.5 Body.

4.5.1 Texture: Sliceable.

4.5.2 Color: Ivory to light yellow.

4.6 Holes.

4.6.1 Distribution: Regular, scarce to plentiful.

4.6.2 Shape: Round.

4.6.3 Diameter: Mainly from 0.5 to 1.0 cm.

4.6.4 Appearance: Mat to brilliant.

4.7 Minimum fat content in the dry matter: 45 percent.

4.8 Maximum moisture content: 38 percent. Minimum dry matter content: 62 percent.

4.9 Other principal characteristics.

4.9.1 Taste and flavor: More or less tangy.

4.9.2 Ready for consumption: The cheese is ready for consumption at a minimum age of 80 days from the day of manufacture.

4.9.3 Storing ability: The cheese should normally maintain its characteristics for a minimum of 1 month at a temperature of 15° C from the time it is ready for consumption.

5. *Method of manufacture.*

5.1 Method of coagulation: Rennet or other suitable coagulating enzymes.

5.2 Heat treatment: After cutting the curd to particles about the size of wheat grains, heating to 50° C as a minimum.

5.3 Fermentation procedure: Lactic acid fermentation and proplonic acid fermentation taking place throughout the cheese at 14° C minimum for a minimum of 4 weeks.

5.4 Maturation procedure: Proteolysis due to action of enzymes of lactic acid bacteria and smear organisms at succeeding temperatures between 10° and 20° C.

5.5 Other principal characteristics.

5.5.1 Treatment of milk: Use of raw milk.

5.5.2 Treatment with cooking salt: The cheeses are salted by immersion in salt solution and/or dry-salted on the surface. During maturation, the surface of the cheeses is salted and smeared at intervals.

6. *Sampling and analysis.*

6.1 Sampling: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clause 7.2(b), "Sampling by means of a trier." Reference is made to clauses 7.2.2.1 and 7.2.2.5.

6.2 Determination of fat content: According to FAO/WHO Standard B.3, "Determination of the Fat Content of Cheese and Processed Cheese Products."

7. *Marking and labeling.* Only cheese conforming with the standard may be designated "Gruyere," "Greyerzer," or "Gruviera." It shall be labeled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese," except that Gruyere not produced in the countries of origin must be marked with the name of the producing country even when sold on the home market.

[1] Or such other synonym (e.g., Goudycki) derived from the name Gouda as will clearly indicate this variety.

* Temporarily endorsed.

** Subject to endorsement.

STANDARD No. C-12 (1968)

INTERNATIONAL INDIVIDUAL STANDARD FOR LIMBURGER

1. *Designation of cheese:* Limburger.[1]

2. *Depositing countries:* Federal Republic of Genmany, United States of America. (Country of origin: Belgium.)

3. *Raw materials.* 3.1 Kind of milk: Cow's milk.

3.2 Authorized additions.

3.2.1 Necessary additions: Cultures of harmless lactic acid producing bacteria (starter) and cultures of Bacterium linens; rennet or other suitable coagulating enzymes; and sodium chloride.

3.2.2 Optional additions: Calcium chloride, maximum 200 mg/kg of the milk used; beta carotene, maximum 600 mg/kg of the cheese; sodium and potassium nitrate, maximum 200 mg/kg of the milk used.** riboflavin (Lactoflavin); and safe and suitable enzymes to assist in flavor development.

4. *Principal characteristics of the cheese ready for consumption.*

4.1 Type.

4.1. Consistency: Soft.

4.1.2 Short description: A soft surface ripened cheese carrying a rather intensive aromatic flavor. Usually consumed at 3-6 weeks.

4.2 Shape (usual): Cubical or rectangular.

4.3 Dimensions and weight.

4.3.1 Dimensions (usual): Approximately 6x6 cm and varying in height.

4.3.2 Weight (usual): Maximum 1 kg.

4.4 Rind.

4.4.1 Consistency: Elastic.

4.4.2 Appearance: Smear developed by red and yellow smear organisms.

4.4.3 Color: Reddish-brown.

4.5 Body.

4.5.1 Texture: Soft but still sliceable.

4.5.2 Color: Ivory to yellow.

4.6 Holes.

4.6.1 Distribution: Few, irregularly distributed.

4.6.2 Shape: Irregular.

4.6.3 Size: Up to the size of a barley grain.

4.6.4 Appearance: Shiny.

4.7/4.8 Limits for fat in dry matter, moisture and dry matter contents:

Limburger

[Percent]

	A	B	C	D	E
		20	30	40	45
Minimum fat in dry matter	50	20	30	40	45
Maximum moisture content	50	65	62	58	53
Minimum dry matter content	50	35	38	42	47 47

4.9 Other principal characteristics: Typical flavor developed by red and yellow smear-producing bacteria during the ripening period of at least 2 weeks.

5. *Method of manufacture.*

5.1 Method of coagulation: Rennet or other suitable coagulating enzymes.

5.2 Heat treatment: Little or no heat applied during the manufacturing procedure.

5.3 Fermentation procedure: Lactic acid fermentation with subsequent smear development.

5.4 Maturation procedure: Ripened at 12-16° C for approximately 2 weeks.

5.5 Other principal characteristics: cheese is melted from the surface before curing or salted in brine. The rind is regularly rubbed with brine during curing.

6. *Sampling and analysis.*

6.1 Sampling: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clauses 7.2 (a), "Sampling by cutting," or 7.2 (c), "Taking a complete cheese as a sample."

6.2 Determination of fat content: According to FAO/WHO Standard B.3, "Determination of the Fat Content of Cheese and of Processed Cheese Products."

7. *Marking and labeling.* Only cheese conforming with this standard may be designated "Limburger"; it shall be labeled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese."

The cheese mentioned under B, C, D, and E in 4.7 and 4.8 may be designated "Limburger" provided that the designation is accompanied by a prefix corresponding to the fat percentage, e.g., 30 percent Limburger.

STANDARD No. C-15 (1968)

INTERNATIONAL INDIVIDUAL STANDARD FOR PROVOLONE

1. *Designation of cheese:* Provolone.

2. *Depositing countries:* Italy (county or origin), United States of America.

3. *Raw materials.*

3.1 Kind of milk: Cow's milk.

3.2 Authorized additions.

3.2.1 Necessary additions: Cultures of harmless lactic acid-producing bacteria (starter); rennet (calf, lamb, or kid; liquid or paste) or other suitable coagulating enzymes; and sodium chloride.

3.2.2 Optional additions: Smoke**; hexamethylenetetramine, maximum 600 mg/kg of the liquid used to work the curd**; calcium chloride, maximum 200 kg/kg of the milk used; fast green FCF (Color Index 42053)**; brilliant blue FCF (Color Index 42090)**; indigotine FCF (Color Index 73015)**; safe and suitable enzymes to assist in flavor development; and benzoyl peroxide as a bleach.**

4. *Principal characteristics of the cheese ready for consumption.*

4.1 Type: Provolone is a "pasta filata" cheese which is used as a table or grating cheese and may be consumed either fresh or aged.

4.2 Shape: Various.

4.3 Dimensions and weights: Various.

4.4 Rind.

4.4.1 Appearance: Commonly covered with vegetable fat and/or oil, paraffin and/or plastic film.

4.4.2 Color: Natural color rind yellow to brown.

4.5 Body.

4.5.1 Texture: Fibrous or smooth.

4.5.2 Color: White to yellow straw.

4.6 Holes: A few holes and splits permitted.

4.7 Minimum fat content in the dry matter: 45 percent.

4.8 Maximum moisture content: 47 percent for unsmoked cheese; 45 percent for smoked cheese. Minimum dry matter content: 53 percent for unsmoked cheese; 55 percent for smoked cheese.

4.9 Other principal characteristics: Sweetish, buttery taste after ripening 2 to 3 months, strong or piquant taste after aging when rennet from kid is used.

5. *Method of manufacture.*

5.1 Method of coagulation: Calf's rennet for "sweet curd" and lamb or kid's rennet for "strong cheese," or other suitable coagulating enzymes.

5.2 Heat treatment of the coagulum: Curd is placed in hot water or hot whey and kneaded and stretched until smooth and free from lumps.

5.3 Fermentation procedure: The milk is subjected to the action of lactic acid produced by bacteria present in the milk or added as a starter thereto. After the proper ripening period is reached, rennet or another suitable enzyme is added to coagulate the milk.

5.4 Maturation procedure: The coagulated curd is cut, stirred, and heated to promote and regulate the separation of whey from the curd. The whey is drained off, the curd is matted and cut, immersed in hot water and kneaded and stretched until it is smooth and free from lumps. The curd is then cut and placed in molds. During molding the surface is kept warm to properly seal the surface. The molded curd is then firmed by immersion in cold water before salting.

5.5 Other principal characteristics: Cheese is salted by immersion in brine. Some shapes may be encased in ropes or twine before drying. The surface may be paraffined or waxed. The cheese may be smoked.

6. *Sampling and analysis.*

6.1 Sampling: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," paragraph 7, "Sampling of Cheese."

6.2 Determination of fat content: According to FAO/WHO Standard B.3 "Determination of the Fat Content of Cheese and of Processed Cheese Products."

7. *Marking and labeling.* Only cheese conforming with this standard may be designated "Provolone." It shall be labeled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese."

STANDARD No. C-7 (1966)

INTERNATIONAL INDIVIDUAL STANDARD FOR SAMSOE

1. *Designation of cheese:* Samsoe (in Danish: Samsø).

2. *Depositing country:* Denmark (country of origin).

3. *Raw materials.*

3.1 Kind of milk: Cow's milk.

3.2 Authorized additions.

3.2.1 Necessary additions: Cultures of harmless lactic acid-producing bacteria (starter); rennet or other suitable coagulating enzymes; and sodium chloride.

3.2.2 Optional additions: Calcium chloride, maximum 200 mg/kg of the milk used; annatto* and beta carotene, singly or in combination, maximum 600 mg/kg of cheese; sodium and potassium nitrate, maximum 200 mg/kg of the milk used**; water; and cumin seed.

4. *Principal characteristics of the cheese ready for consumption.*

[1]Or such synonyms derived from this name as will clearly indicate this variety.

**Subject to endorsement.

**Subject to endorsement.

*Temporarily endorsed.

**Subject to endorsement.

4.1 Type (consistency): Hard.
4.2 Shape: (a) Flat cylindrical; (b) flat square; and (c) rectangular.
4.3 Dimensions and weights.
4.3.1 Dimensions: (a) Flat cylindrical: Diameter 44 cm approximately; (aa) "Mini-Samsoe": Diameter 9 cm approximately; (b) flat square: side 38 cm approximately; and (c) rectangular: Various.
4.3.2 Weights: (a) Flat cylindrical: 14 kg approximately; (aa) "Mini-Samsoe": 0.25 kg approximately; (b) flat square: 14 kg approximately; and (c) rectangular: Various.
4.4 Rind.
4.4.1 Consistency: Hard.
4.4.2 Appearance: Dry, with or without wax or plastic coating.
4.4.3 Color: Yellow.
4.5 Body.
4.5.1 Texture: Firm, suitable for cutting.
4.5.2 Color: Yellowish.
4.6 Holes.
4.6.1 Distribution: From few to plentiful, evenly distributed.
4.6.2 Shape: Round.
4.6.3 Size: Varying from pea to cherry.
4.6.4 Appearance: Smooth.
4.7/4.8 Limits for fat in dry matter, moisture and dry matter contents:

Samsoe

[Percent]

	A	B	C
		30	Mini
Minimum fat in dry matter...	45	30	45
Maximum moisture content..	44	52	48
Minimum dry matter content.....	56	48	52

4.9 Other principal characteristics: Samsoe cheese is normally not exported or sold to consumers before it is at least 6 weeks old. "Mini-Samsoe" is normally not exported or sold before it is at least 3 weeks old.
5. *Method of manufacture.*
5.1 Method of coagulation: Rennet or other suitable coagulating enzymes; addition of a lactic acid starter.
5.2 Heat treatment: Slightly heated after cutting.
5.3 Fermentation procedure: Chiefly lactic acid and slightly prepressed.
5.4 Maturation procedure: Humid to dry, at a temperature between 10° and 20° C.
5.5 Other principal characteristics: Salted, normally in brine.
6. *Sampling and analysis.*
6.1 Sampling: According to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clause 7.2(b), "Sampling by means of a trier"; reference is made to clauses 7.2.2.3 and 7.2.2.5. "Mini-Samsoe" is sampled according to clause 7.2(c), "Taking a complete cheese as a sample."
6.2 Determination of fat content: According to FAO/WHO Standard B.3, "Determination of the Fat Content of Cheese and Processed Cheese Products."
7. *Marking and labeling.* Only cheese conforming with this standard may be designated "Samsoe." It shall be labeled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese," except that Samsoe not produced in the country of origin must be marked with the name of the producing country even when sold on the home market.

The cheese mentioned under 4.7/4.8B may be designated "Samsoe," *Provided,* That the designation is accompanied by the prefix 30 percent. The cheese mentioned under 4.3.1(aa) and 4.3.2(aa) and 4.7/4.8C may be designated "Samsoe," *Provided,* That the designation is accompanied by the prefix "Mini."

The name "30 percent Samsoe" may only be used to designate cheeses which are both manufactured and marketed in countries where it is traditional and whose legislation provides for the use of the same designation for cheeses for which different minimum fat contents are specified, *Provided,* That one of the minimum fat contents so specified is above 45 percent.

STANDARD No. C-9 (1967)

INTERNATIONAL INDIVIDUAL STANDARD FOR EMMENTALER

1. *Designation of cheese:* Emmentaler, Emmental.
2. *Depositing countries:* Switzerland (country of origin), Finland, France, United States of America.
3. *Raw materials.*
3.1 Kind of milk: Cow's milk.
3.2 Authorized additions.
3.2.1 Necessary additions: Cultures of harmless lactic acid-producing bacteria (starter) and of propionic acid producing bacteria; rennet or other suitable coagulating enzymes; sodium chloride; and water.
3.2.2 Optional additions: Calcium chloride, maximum 200 mg/kg of the milk used, and cupric sulphate, maximum 15 mg/kg cheese expressed as copper.
4. *Principal characteristics of the cheese ready for consumption.*
4.1 Type: 4A (round loaf)—Hard cheese; 4B (block)—Hard cheese; 4C (rindless block)—Hard cheese.
4.2 Shape: 4A (round loaf)—Round loaf; 4B (block)—Rectangular block; 4C (rindless block)—Rectangular block.
4.3 Dimensions and weights.
4.3.1 Height: 4A (round loaf)—12 to 30 cm; 4B (block)—12 to 30 cm; 4C (rindless block)—12 to 30 cm.
4.3.2 Diameter: 4A (round loaf)—70 to 100 cm.
4.3.3 Weight: 4A (round loaf)—minimum 50 kg; 4B (block)—minimum 30 kg; 4C (rindless block)—minimum 30 kg.
4.4 Rind.
4.4.1 Consistency: 4A (round loaf)—Hard; 4B (block)—Hard; 4C (rindless block)—Soft.
4.4.2 Appearance: 4A (round loaf)—Dry; 4B (block)—Dry; 4C (rindless block)—Like inside.
4.4.3 Color: 4A (round loaf)—Golden yellow to brown; 4B (block)—Golden yellow to brown; 4C (rindless block)—Ivory to light yellow.
4.5 Body.
4.5.1 Texture: Sliceable.
4.5.2 Color: Ivory to light yellow.
4.6 Holes.
4.6.1 Distribution: Regular, scarce to plentiful.
4.6.2 Shape: Round.
4.6.3 Diameter: Mainly 1-3 cm.
4.6.4 Appearance: Mat to brilliant.
4.7 Minimum fat content in dry matter: 45 percent.
4.8 Maximum moisture content: 40 percent. Minimum dry matter content: 60 percent.
4.9 Other principal characteristics.
4.9.1 Taste and flavor: Mild, nutlike, more or less pronounced.
4.9.2 Ready for consumption: Minimum of 60 days from day of manufacture.
4.9.3 Storing ability: The cheese should normally maintain its characteristics for a minimum of 1 month at a temperature of 15° C from the time it is ready for consumption.
5. *Method of manufacture.*
5.1 method of coagulation: Rennet or other suitable coagulating enzymes.
5.2 Heat treatment: After cutting the curd to particles about the size of wheat grains, heating to 50° C as a minimum.
5.3 Fermentation procedure: Lactic acid fermentation and propionic acid fermentation taking place throughout the cheese at 20° C minimum, for a minimum of 3 weeks.
5.4 Maturation procedure: Proteolysis due to action of microbial enzymes at succeeding temperatures between 10° and 25° C.
5.5 Other principal characteristics: Treatment with cooking salt; the cheeses are salted by immersion in salt solution and/or dry-salted on the surface; during maturation, except in the case of rindless block, the surface of the cheese is washed, cleaned and salted at intervals.
6. *Sampling and analysis.*
6.1 Sampling: According to FAO-WHO Standard B.1, "Sampling Methods for Milk and Milk Products," clause 7.2(b) "Sampling by means of a trier." Reference is made to clauses 7.2.2.1 and 7.2.2.5.
6.2 Determination of fat content: According to FAO/WHO Standard B.3, "Determination of the Fat Content of Cheese and Processed Cheese Products."
7. *Marking and labeling.* Only cheese conforming with this standard may be designated "Emmentaler" or "Emmental." It shall be labeled in conformity with the appropriate sections of Article 4 of FAO/WHO Standard A.6, "General Standard for Cheese," except that Emmentaler not produced in the country of origin must be marked with the name of the producing country even when sold on the home market.

The following discussion sets forth the significant differences between the Codex standards and U.S. standards with proposed revisions. Following each point is the Commissioner's proposed action. The Commissioner is of the opinion that the proposed changes are reasonable, will benefit international trade, and will promote honesty and fair dealing in the interest of consumers.

1. *Variable fat levels.* Codex standards for blue cheese (C-32), limburger cheese (C-12), and samsoe cheese (C-7) provide for variable fat levels within each standards. These standards require that the fat content, on a dry basis, accompany the name of the food.

The Commissioner recognizes the desirability of providing for lower-fat cheeses, thus giving consumers more choices in the marketplace. He therefore proposes to adopt the Codex provisions for variable fat levels for blue cheese limburger cheese, and samsoe cheese. In addition, he is aware that cheddar cheese and swiss cheese having higher moisture and lower fat

levels than provided for in the existing standards for these foods are currently produced and marketed in the United States as "imitation" foods. Therefore, he also is proposing variable fat levels for these cheeses. If interest in providing for variable fat levels in the other cheese standards included in this proposal exists, the Commissioner would like to receive comments to this effect, accompanied by information and/or data in support of suggested fat levels for each cheese. Elsewhere in this document the Commissioner is proposing that a declaration of milk fat content, by weight, accompany the name of the food.

2. *Optional ingredients.* Many of the Codex standards provide for the use of such optional ingredients as sodium and potassium nitrates, sodium dihydrogen phosphate, disodium hydrogen phosphate, cupric sulfate, and hexamethylenetetramine.

The Commissioner is unaware of the need in cheese manufacturing practice in the United States for the above-named chemicals.

The Codex standards list all permitted optional ingredients individually, rather than by a functional group designation.

The Commissioner believes that the proposed revision of the U.S. standards to provide for the use of functional groups of safe and suitable ingredients rather than individually naming each approved ingredient from the functional group simplifies the standards and eliminates the need to amend the standards each time a food additive petition is submitted and approved which is applicable to a standard of identity for a cheese variety.

3. *Minimum milk fat and maximum moisture levels.* In certain instances, the minimum milk fat or maximum moisture levels permitted by the Codex standards differ from those in the U.S. standards.

Wherever the minimum, milk fat level is higher in the Codex standard than in the corresponding U.S. standard, the Commissioner is proposing retention of the latter. The Commissioner understands that milk now produced in the United States is not as high in milk fat as the milk of several years ago. To meet higher milk fat minimums, cheese manufacturers would have to use increased amounts of milk fat, the higher cost being borne by consumers. Since consumer interest seems to be directed to lower-fat foods and the minimum milk fat levels specified in the U.S. standards would not hinder a manufacturer from producing a higher-fat cheese, the Commissioner finds no justification for proposing acceptance of the higher milk fat minimums set by the Codex standards.

Further, the Commissioner is not proposing to accept Codex maximum moisture levels where such levels are higher. He believes this action would have the effect of lowering the quality of the cheeses, because water would displace more valuable constitutents such as milk fat and milk solids-not-fat.

4. *Phenol equivalent value.* The Codex standards do not include maximum phenol equivalent values to be used as indicators of effective pasteurization.

As discussed earlier, the Commissioner proposes to retain or to provide for maximum allowable phenol equivalent values in each standard. When pasteurized milk products are used, he is of the opinion that the phenol equivalent value, as determined by the phosphatase test described in the proposed § 133.5, serves as an indicator of effective pasteurization procedures.

In a notice published in the FEDERAL REGISTER of June 9, 1978 (43 FR 25296), the Food and Drug Administration, the U.S. Department of Agriculture, and the Federal Trade Commission announces a series of five public hearings to discuss several issues related to food labeling, including ingredient labeling, nutrition labeling, and imitation foods. The last of these hearings is scheduled for October 25-26, 1978. Because the Commissioner intends to take into consideration all relevant information presented at the hearings in developing a regulation based upon this proposal, the Commissioner has scheduled the comment period on this proposal to extend beyond the last of the hearings; comments may be sumbitted on or before November 27, 1978.

The Commissioner proposes that all products initially introduced into interstate commerce on or after 1 year following the date of issuance of a regulation based upon this proposal shall comply with the regulation, except for any provisions that may be stayed by the filing of proper objections.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in § 25.1(d)(4) (21 CFR 25.1(d)(4)) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this amendment.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that part 133 be amended as follows:

1. By revising § 133.3 to read as follows:

§ 133.3 Definitions.

(a) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows; concentrated milk, reconstituted milk, and dry whole milk. Water, in a sufficient quantity to reconstitute concentrated and dry forms, may be added.

(b) "Nonfat milk" means skim milk, concentrated skim milk, reconstituted skim milk, and nonfat dry milk. Water, in a sufficient quantity to reconstitute concentrated and dry forms, may be added.

(c) "Cream" means cream, reconstituted cream, dry cream, and plastic cream. Water, in a sufficient quantity to reconstitute concentrated and dry forms, may be added.

(d) "Pasteurized" when used to describe a dairy ingredient means that every particle of such ingredient shall have been heated in properly operated equipment to one of the temperatures specified in the table of this paragraph and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be eqivalent thereto in microbial destruction):

Temperature	Time
145° F[1]	30 min.
161° F[1]	15 s.
191° F	1 s.
204° F	0.05 s.
212° F	0.01 s.

[1] If the dairy ingredient has a fat content of 10 percent or more, the specified temperature shall be increased by 5° F.

(e) "Ultrapasteurized" when used to describe a dairy ingredient means that such ingredient shall have been thermally processed at or above 280° F for at least 2 seconds.

2. By adding new § 133.5, to read as follows:

§ 133.5 Methods of analysis.

Moisture, milk fat, and phosphatase levels in cheeses will be determined by the following methods of analysis from "Official Methods of Analysis of the Association of Official analytical Chemists," 12th ed., 1975.[2]

(a) Moisture content—"Moisture, Method I—Official Final Action," § 16.217.

(b) Milk fat content—"Fat—Official Final Action," § 16.230.

(c) Phenol equivalent value—"Residual Phosphatase—Official Final Action," § 16.245.

3. By revising § 133.106, to read as follows:

§ 133.106 Blue cheese.

(a) *Description.* (1) Blue cheese is the food prepared by the procedure

[2] Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

set forth in paragraph (a)(4) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold throughout the cheese. The minimum milk fat and maximum moisture contents, by weight, shall conform to any one of the fat/moisture combinations in paragraph (a)(2) of this section. Each minimum fat/maximum moisture content combination will result in the maximum percent moisture on a fat-free basis by weight, and minimum percent total solids by weight, indicated. The dairy ingredients used may be pasteurized. Blue cheese is at least 60 days old.

(2) Any one of the following minimum milk fat/maximum moisture combinations may be used:

[Figures in percent]

Minimum fat	31	26	20
Maximum moisture	48	48	55
Moisture on a fat-free basis	70	65	69
Total solids	52	52	45

(3) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of blue cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(4) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be bleached, warmed, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed in forms permitting further drainage. While being placed in forms, spores of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd, and it is held at a temperature of approximately 50° F, at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. Antimycotics may be applied to the surface of the whole cheese. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages or to the surface of the bulk cheese during curing.

(v) Benzoyl peroxide or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate used to bleach the dairy ingredients. The weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the milk being bleached, and the weight of the potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If milk is bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used.

(c) *Nomenclature.* (1) The name of the food is "blue cheese."

(2) The following phrase, in letters not less than one-half the height of the letters used in the name of the food, shall accompany the name of the food wherever it appears on the principal display panel or panels: "Contains —% fat", the blank being filled in with the whole number closest to the actual fat content, by weight, of the food.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

4. By revising § 133.113, to read as follows:

§ 133.113 Cheddar cheese.

(a) *Description.* (1) Cheddar cheese is the food prepared by the procedure set forth in paragraph (a)(4) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat and maximum moisture contents, by weight, shall conform to either of the fat/moisture combinations in paragraph (a)(2) of this section. Each minimum fat/maximum moisture content combination will result in the maximum percent moisture on a fat-free basis by weight, and minimum percent total solids by weight, indicated. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35° F for at least 60 days.

(2) Either of the following minimum milkfat/maximum moisture combinations may be used:

[Figures in percent]

Minimum fat	31	24
Maximum moisture	39	41
Moisture on a fat-free basis	57	54
Total solids	61	59

(3) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of cheddar cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(4) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. The whey is drained off, and the curd is matted into a cohesive mass. The mass is cut into slabs, which are so piled and handled as to promote the drainage of whey and the development of acidity. The slabs are then cut into pieces, which may be rinsed by sprinkling or pouring water over them, with free and continuous drainage; but the duration of such rinsing is so limited that only the whey on the surface of such pieces is removed. The curd is salted, stirred, further drained, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(c) *Nomenclature.* (1) The name of the food is "cheddar cheese".

(2) The following phrase, in letters not less than one-half the height of the letters used in the name of the food, shall accompany the name of the food wherever it appears on the principal display panel or panels: "Contains —% fat", the blank being filled in with the whole number closest to the actual fat content by weight of the food.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order or predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

5. By revising § 133.114, to read as follows:

§ 133.114 Cheddar cheese for manufacturing.

Cheddar cheese for manufacturing conforms to the definition and standard of identity prescribed for cheddar cheese by § 133.113, except that the milk is not pasteurized, curing is not required, and the provisions of paragraph (b)(3)(iv) of that section do not apply.

6. By revising § 133.116, to read as follows:

§ 133.116 Low sodium cheddar cheese.

Low sodium cheddar cheese is the food prepared from the same ingredients and in the same manner prescribed in § 133.113 for cheddar cheese and complies with all the provisions of § 133.113, including the requirements for label statement of ingredients, except that:

(a) Salt is not used. Any safe and suitable ingredient or combination of ingredients that contains no sodium and that is recognized as a salt substitute may be used.

(b) It contains not more than 96 milligrams of sodium per pound of finished food.

(c) The name of the food is "low sodium cheddar cheese". The letters in the words "low sodium" shall be of the same size and style of type as the letters in the words "cheddar cheese", wherever such words appear on the label.

(d) If a salt substitute as provided for in paragraph (a) of this section is used, the label shall bear the statement "———— added as a salt substitute", the blank being filled in with the common name or names of the ingredient or ingredients used as a salt substitute.

(e) Low sodium cheddar cheese is subject to § 105.69 of this chapter.

7. By revising § 133.138, to read as follows:

§ 133.138 Edam cheese.

(a) *Description.* (1) Edam cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 22 percent by weight, and the maximum moisture content is 45 percent by weight. At these milkfat and moisture levels, the maximum moisture on a fat-free basis will be 58 percent by weight, and the minimum total solids will be 55 percent by weight. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than than 35° for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of edam cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. After coagulation the mass is cut into small cube-shaped pieces with sides approximately three-eighths-inch long. The mass is stirred and heated to about 90° F, and so handled by further stirring, heating, dilution with water or salt brine, and salting as to promote and regulate the separation of curd and whey. When the desired curd is obtained, it is transferred to forms permitting drainage of whey. During drainage the curd is pressed and turned. After drainage the curd is removed from the forms and is salted and cured. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedures.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clothing enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(c) *Nomenclature.* (1) The name of the food is "edam cheese."

(2) The following phrase, in letters not less than one-half the height of the letters used for the name of the food, shall accompany the name of the food wherever it appears on the principal display panel of panels: "Contains — percent fat," the blank being filled in with the whole number closest to the actual fat content, by weight, of the food.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat," as appropriate.

8. By revising § 133.142, to read as follows:

§ 133.142 Gouda cheese.

Gouda cheese conforms to the definition and standard of identity and complies with the requirements for label declaration of ingredients prescribed for edam cheese by § 133.138, except that the minimum milkfat content is 25 percent by weight and the maximum moisture content is 45 percent by weight. At these milkfat and moisture levels, the maximum moisture on a fat-free basis will be 60 percent by weight, and the minimum total solids will be 55 percent by weight.

9. By revising § 133.149, to read as follows:

§ 133.149 Gruyere cheese.

(a) *Description.* (1) Gruyere cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It contains small holes or eyes. It has a mild flavor, due in part to the growth of surface-curing agents. The minimum milkfat content is 27 percent by weight, and the maxi-

mum moisture content is 39 percent by weight. At these milkfat and moisture levels, the maximum moisture on a fat-free basis will be 53 percent by weight, and the minimum total solids will be 61 percent by weight. The dairy ingredients used may be pasteurized. The cheese is at least 90 days old.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of gruyere cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of lactic acid-producing and propionic acid-producing bacterial cultures. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into particles similar in size to wheat kernels. For about 30 minutes the particles are alternately stirred and allowed to settle. The temperature is raised to about 126° F. Stirring is continued until the curd becomes firm. The curd is transferred to hoops or forms, and pressed until the desired shape and firmness are obtained. The cheese is surface-salted while held at a temperature of 48° to 54° F for a few days. It is soaked for 1 day in a saturated salt solution. It is then held for 3 weeks in a salting cellar and wiped every 2 days with brine cloth to insure growth of biological curing agents on the rind. It is then removed to a heating room and held at progressively higher temperatures, finally reaching 65° F with a relative humidity of 85 to 90 percent, for several weeks, during which time small holes, or so-called eyes, form. The cheese is then stored at a lower temperature for further curing. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Calcium chloride in an amount not more than 0.002 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(ii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iii) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(c) *Nomenclature.* (1) The name of the food is "Gruyere cheese".

(2) The following phrase, in letters not less than one-half the height of the letters used in the name of the food, shall accompany the name of the food wherever it appears on the principal display panel or panels: "Contains —% fat", the blank being filled in with the whole number closest to the actual fat content, by weight, of the food.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

10. By revising § 133.152, to read as follows:

§ 133.152 Limburger cheese.

(a) *Description.* (1) Limburger cheese is the food prepared by one of the procedures set forth in paragraph (a)(4) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat and maximum moisture contents, by weight, shall conform to any one of the fat/moisture combinations in paragraph (a)(2) of this section. Each minimum fat/maximum moisture content combination will result in the maximum percent moisture on a fat-free basis by weight, and minimum percent total solids by weight, indicated. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of 35° F for at least 60 days.

(2) Any one of the following minimum milkfat/maximum moisture combinations may be used.

[Figures in percent]

Minimum fat	25	21	17	11	7
Maximum moisture	50	53	58	62	65
Moisture on a fat-free basis	67	67	70	70	70
Total solids	50	47	42	38	35

(3) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of Limburger cheese is not more than 4 micrograms as determined by the method described in § 133.5.

(4) One of the following procedures may be followed for producing Limburger cheese:

(i) One or more of the dairy ingredients, unpasteurized, specified in paragraph (b)(1) of this section is warmed to about 92° F and subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into cubes with sides approximately one-half inch long. After a few minutes the mass is stirred and heated, gradually raising the temperature to 96° to 98° F. The curd is then allowed to settle, most of the whey is drained off, and the remaining curd and whey dipped into molds. During drainage the curd may be pressed. It is turned at regular intervals. After drainage the curd is cut into pieces of desired size and dry-salted at intervals for 24 to 48 hours. The cheese is then cured with frequent applications of a weak brine solution to the surface, until the proper growth of surface-curing organisms is obtained. It is then wrapped and held in storage for development of as much additional flavor as is desired. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(ii) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is pasteurized, brought to a temperature of 89° to 90° F after pasteurization, and is subjected to the action of a lactic acid-producing bacterial culture. The procedure is then the same as in paragraph (a)(4)(i) of this section, except that heating is to 94° F. After most of the whey is drained off, salt brine at a temperature of 66° to 70° F is added, so that the pH of the curd is about 4.8. The mixed curd, whey, and brine is dipped into molds, and the remaining procedure specified in paragraph (a)(1)(i) of this section is followed.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) *Nomenclature.* (1) The name of the food is "Limburger cheese".

(2) The following phrase, in letters not less than one-half the height of the letters used in the name of the food, shall accompany the name of the food wherever it appears on the principal display panel or panels: "Contains —% fat", the blank being filled in with

the whole number closest to the actual fat content, by weight, of the food.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declard as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

11. By revising § 133.181, to read as follows:

§ 133.181 Provolone cheese.

(a) *Description.* (1) Provolone, a pasta filata or stretched curd-type cheese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section, or by any other method which produces a finished cheese having the same physical and chemical properties. It has a stringy texture. The minimum milkfat content is 25 percent by weight, and the maximum moisture content is 45 percent by weight. At these milkfat and moisture levels, the maximum moisture on a fat-free basis will be 60 percent by weight, and the minimum total solids will be 55 percent by weight. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of 35° F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of Provolone cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be bleached, warmed, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut, stirred, and heated so as to promote and regulate the separation of whey from the curd. The whey is drained off, and the curd is matted and cut, immersed in hot water, and kneaded and stretched until it is smooth and free from lumps. Antimycotics may be added to the curd during the kneading and stretching process. Then it is cut and molded. During the molding the curd is kept sufficiently warm to cause proper sealing of the surface. The molded curd is then firmed by immersion in cold water, salted in brine, and dried. It is given some additional curing. Provolone cheese may be smoked, and one or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages or added to the curd during the kneading and stretching process.

(v) Benzoyl peoxide or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate used to bleach the dairy ingredients. The weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the milk being bleached, and the weight of the potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If milk is bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used.

(c) *Nomenclature.* (1) The name of the food is "provolone cheese". The name of the food may include the common name of the shape of the cheese, such as "salami provolone".

(2) The following words or phrases, in letters not less than one-half the height of the letters used in the name of the food, shall accompany the name of the food wherever it appears on the principal display panel or panels:

(i) "Contains —% fat", the blank being filled in with the whole number closest to the actual fat content, by weight, of the food.

(ii) "Smoked" if the food has been smoked.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

12. By revising § 133.185, to read as follows:

§ 133.185 *Samsoe cheese.*

(a) *Description.* (1) Samsoe cheese is the food prepared by the procedure set forth in paragraph (a)(4) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It has a small amount of eye formation of approximately uniform size of about five-sixteenths inch (8 millimeters). The minimum milkfat and maximum moisture contents, by weight, shall conform to either of the fat/mositure combinations in paragraph (a)(2) of this section. Each minimum fat/maximum moisture content combination will result in the maximum percent moisture on a fat-free basis by weight, and minimum percent total solids by weight, indicated. The dairy ingredients used may be pasteurized. Samsoe is cured at not less than 35° F for at least 60 days.

(2) Either of the following minimum milkfat/maximum moisture combinations may be used:

[Figures in percent]

Minimum fat	27	14
Maximum moisture	41	52
Moisture on a fat-free basis	56	69
Total solids	59	43

(3) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of samsoe cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(4) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. After coagulation the mass is cut into small cube-shaped pieces with sides approximately three-eighths inch (1 centimeter). The mass is stirred and heated to about 102° F, and so handled by further stirring, heating, dilution with water, and salting as to promote and regulate the separation of curd and whey. When the desired curd is obtained, it is transferred to forms permitting drainage of whey. During drainage, the curd is pressed. After drainage, the curd is removed from the forms and is further salted by immersing in a concentrated salt solution for about 3 days. The curd is then cured at a temperature of from 60° to 70° F for 3 to 5 weeks to obtain the desired eye forma-

tion. Further curing is conducted at a lower temperature. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(c) *Nomenclature.* (1) The name of the food is "Samsoe cheese".

(2) The following phrase, in letters not less than one-half the height of the letters used in the name of the food, shall accompany the name of the food wherever it appears on the principal display panel or panels: "Contains —% fat", the blank being filled in with the whole number closest to the actual fat content, by weight, of the food.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "notfat milk and milkfat", as appropriate.

13. By revising § 133.195, to read as follows:

§ 133.195 Swiss and emmentaler cheese.

(a) *Description.* (1) Swiss cheese, Emmentaler cheese, is the food prepared by the procedure set forth in paragraph (a)(4) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. It has holes or eyes developed throughout the cheese. The minimum milkfat and maximum moisture contents, by weight, shall conform to any one of the milkfat/moisture combinations in paragraph (a)(2) of this section. Each minimum fat/maximum moisture combination will result in the maximum percent moisture on a fat-free basis by weight, and minimum total solids content by weight, indicated. The dairy ingredients used may be pasteurized. Swiss cheese is at least 60 days old.

(2) Any one of the following minimum milkfat/maximum moisture combinations may be used:

[Figures in percent]

Minimum fat	25	20	15
Maximum moisture	41	44	47
Moisture on a fat-free basis	55	55	55
Total solids	59	56	53

(3) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of Swiss cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(4) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be bleached, warmed, and is subjected to the action of lactic acid-producing and propionic acid-producing bacterial cultures. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into particles similar in size to wheat kernels. For about 30 minutes the particles are alternately stirred and allowed to settle. The temperature is raised to about 126° F. Stirring is continued until the curd becomes firm. The acidity of the whey at this point, calculated as lactic acid, does not exceed 0.13 percent. The curd is transferred to hoops or forms and pressed until the desired shape and firmness are obtained. The cheese is then salted by immersing it in a saturated salt solution for about 3 days. It is then held at a temperature of about 50° to 60° F for a period of 5 to 10 days, after which it is held at a temperature of about 75° F until it is approximately 30 days old, or until the so-called eyes form. Salt, or a solution of salt in water, is added to the surface of the cheese at some time during the curing process. The cheese is then stored at a lower temperature for further curing. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(v) Benzoyl peroxide or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate used to bleach the dairy ingredients. The weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the milk being bleached, and the weight of the potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If milk is bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used.

(c) *Nomenclature.* (1) The name of the food is "Swiss cheese", or alternatively, "Emmentaler cheese".

(2) The following phrase, in letters not less than one-half the height of the letters used in the name of the food, shall accompany the name of the food wherever it appears on the principal display panel or panels: "Contains —% fat", the blank being filled in with the whole number closest to the actual fat content, by weight, of the food.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

14. By revising § 133.196, to read as follows:

§ 133.196 Swiss cheese for manufacturing.

Swiss cheese for manufacturing conforms to the definition and standard of identity prescribed for Swiss cheese by § 133.195, except that the holes, or eyes, have not developed throughout the entire cheese, and the provisions of paragraph (b)(3)(v) of that section do not apply; however, the labeling requirements of paragraph (d) of that section do apply.

Interested persons may, on or before November 27, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of

comments, and shall be identified with the hearing clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the hearing clerk, Food and Drug Administration.

Dated: September 8, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

NOTE.—Incorporation by reference provisions approved by the Director of the Office of the Federal Register on March 11, 1976. Material incorporated is on file in the FEDERAL REGISTER library.

[FR Doc. 78-25921 Filed 9-18-78; 8:45 am]

Federal Register

TUESDAY, SEPTEMBER 19, 1978
PART IV

DEPARTMENT OF LABOR

Benefits Review Board

■

ESTABLISHMENT AND OPERATION OF THE BOARD AND RULES OF PRACTICE AND PROCEDURE

[4510-27]

Title 20—Employees' Benefits

CHAPTER VII—BENEFITS REVIEW BOARD, DEPARTMENT OF LABOR

PART 801—ESTABLISHMENT AND OPERATION OF THE BOARD

PART 802—RULES OF PRACTICE AND PROCEDURE

Final Rules

AGENCY: Department of Labor.

ACTION: Final rules.

SUMMARY: These final rules revise the regulations contained in Part 801, Establishment and Operation of the Board, and Part 802, Rules of Practice and Procedure, to reflect changes in definitions and requirements of these parts and to reflect the Benefits Review Board's current review authority in view of enactment of the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977.

EFFECTIVE DATE: This amendment takes effect October 19, 1978.

FOR FURTHER INFORMATION CONTACT:

David Gerson, Senior Board Attorney, Benefits Review Board, U.S. Department of Labor, 1111 20th Street NW., Washington, D.C. 20036, telephone 202-653-5106.

SUPPLEMENTARY INFORMATION: These amended regulations are issued pursuant to Secretary's Order No. 38-72 and are applicable to all appeals from decisions or orders with respect to claims under (1) the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.), (2) the Defense Base Act (42 U.S.C. 1651 et seq.), (3) the District of Columbia Workmen's Compensation Act (36 D.C. Code 501 et seq.), (4) the Outer Continental Shelf Lands Act (43 U.S.C. 1331), (5) the Nonappropriated Fund Instrumentalities Act (5 U.S.C. 8171 et seq.), and (6) title IV, section 415 and part C of the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164, 91 Stat. 1290) (formerly the Federal Coal Mine Health and Safety Act, hereinafter, FCMHSA, of 1969) as amended by the Black Lung Benefits Reform Act of 1977 (92 Stat. 95), and the Black Lung Benefits Revenue Act of 1977 (92 Stat. 11).

Inasmuch as the revised regulations contained herein consist of rules of practice and procedure, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable. However, to afford interested persons adequate notice, the effective date is delayed until October 19, 1978.

The revisions of parts 801 and 802 clarify the requirements of particular sections, add provisions to fill gaps in the former rules, and establish additional procedures which have developed informally since these parts were originally promulgated. Additionally, changes have been made to reflect the Benefits Review Board's authority in black lung benefits appeals. The major changes concern the filing of notices of appeal with the Board, provisions for cross-appeals and protective appeals, fee request requirements, motion requirements including motion for reconsideration, computation of time periods, and relaxation of rules for unrepresented parties. Specifically, the changes in part 801 and part 802 are, among others, as follows:

1. Sections 801.2(a)(10) and 802.201(a) have been clarified to confirm the standing of the Secretary in appeals before the Board.

2. The prohibition in § 802.201(a) with respect to the adjudication of claims filed under the Federal Coal Mine Health and Safety Act prior to July 1, 1973, has been deleted to conform to provisions of section 15 of the Black Lung Benefits Reform Act of 1977.

3. The language of paragraphs (a) and (b) of § 802.203 has been amplified to make clear that fees for services may be approved only where the pursuit of an appeal or a defense is successful. Additionally, new paragraphs (c), (d), and (e) of this section have been added specifying the contents of fee applications, and a new paragraph (f) has been added which prohibits contracts pertaining to fees.

4. Section 802.204 has been amended so as to require that all notices of appeal be filed with the Benefits Review Board rather than the deputy commissioner. This change, it is expected, will reduce the overall appeal time by permitting the Board to immediately process appeals without waiting for the deputy commissioner to forward the notice of appeal and the record in the case. Petitioners are required to send a copy of the notice of appeal to the deputy commissioner.

5. Paragraph (a) of § 802.205 adds new provisions for cross-appeals and protective appeals, and paragraph (b) of that section provides timeframes for such cross-appeals and protective appeals. Paragraph (c) has been modified to accommodate cross-appeals and protective appeals.

6. A new § 802.205A has been added. This section provides that a timely motion to reconsider renders an appeal premature and subject to dismissal. Under this new section, appeal time will begin anew upon action by the administrative law judge on a request for reconsideration and the filing of a new notice of appeal. This new section clears up procedural problems which have arisen when an administrative law judge's decision has been followed both by a motion to reconsider that decision and an appeal to the Board.

7. A new § 802.218 sets forth requirements for the filing of motions generally and responses thereto.

8. A new § 802.219 provides procedural rules and requirements when parties are not represented by counsel.

9. Additional provisions establish office hours for the submission of documents and for public inspection of records (§ 801.304), provide the manner in which the date of mailing of a notice of appeal is established (§ 802.206(b)), provide for more detailed information to be set forth in a notice of appeal (§ 802.207), clarify who may intervene (§ 802.213), and specify the manner of service and the form of papers submitted to the Board (§ 802.215).

10. Changes in § 802.216 relating to the waiver of time limitations have been made so as, among other things, to limit the number of enlargements in ordinary cases to one extension per party.

11. A new § 802.220 specifies the manner in which time periods are computed.

12. Section 802.401 clarifies that the Board may, but is not compelled to, grant a petitioner's motion to dismiss, and that the granting of such motion shall be with prejudice.

13. Sections 802.304, 802.305, 802.307, 802.308 clarify and modify procedures relating to oral argument.

14. Paragraph (b) has been added to § 802.217 providing for show cause orders when a petition for review has not been timely submitted, a new § 802.404(b) provides for per curiam decisions, and a new § 802.303(c) allows the Board to advance an appeal on the docket without waiting for a request by a party.

Accordingly, pursuant to 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 33 U.S.C. 901 et seq., 30 U.S.C. 901 et seq., part 801 and part 802 of title 20 of the Code of Federal Regulations, as amended to date, are hereby revised and read as set forth below.

Signed this 25th day of August 1978 at Washington, D.C.

SAMUEL J. SMITH,
Chairman, Benefits Review Board.
JULIUS MILLER,
Member, Benefits Review Board.
ISMENE M. KALARIS,
Member, Benefits Review Board.

Approved this 11th day of September 1978 at Washington, D.C.

ROBERT J. BROWN,
Under Secretary of Labor.

PART 801—ESTABLISHMENT AND OPERATION OF THE BOARD

Sec.
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801.2 Definitions and use of terms.
801.3 Applicability of this part to 20 CFR Part 802.

ESTABLISHMENT AND AUTHORITY OF THE BOARD

801.101 Establishment.
801.102 Review authority.
801.103 Organizational placement.
801.104 Operational rules.

MEMBERS OF THE BOARD

801.201 Composition of the Board.
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801.304 Business hours.

REPRESENTATION

801.401 Representation before the Board.
801.402 Representation of Board in court proceedings.

AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 33 U.S.C. 901 et seq., 30 U.S.C. 901, et seg.

INTRODUCTORY

§ 801.1 Purpose and scope of this part.

This part 801 describes the establishment and the organizational structure of the Benefits Review Board of the Department of Labor, sets forth the general rules applicable to operation of the Board, and defines terms used in this chapter.

§ 801.2 Definitions and use of terms.

(a) For purposes of this chapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) "Acts" means the several Acts listed in §§ 801.102 and 802.101 of this chapter, as amended and extended, unless otherwise specified.

(2) "Board" means the Benefits Review Board established by section 21 of the LHWCA (33 U.S.C. 921) as described in § 801.101, and as provided in this part and Secretary of Labor's Order No. 38-72 (38 FR 90).

(3) "Chairman" or "Chairman of the Board" means Chairman of the Benefits Review Board.

(4) " Secretary" means the Secretary of Labor.

(5) "Department" means the Department of Labor.

(6) "Judge" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and subpart B of 5 C.F.R. part 930 (see 37 FR 16787), who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings whenever necessary in respect of any claim for benefits or compensation arising under the Acts. The term also includes a hearing officer appointed pursuant to Pub. L. 94-504 who is authorized to conduct formal hearings and adjudicate claims for benefits under title IV of the Federal Mine Safety and Health Act, as amended; except that a person appointed pursuant to Pub. L. 94-504 shall not be considered an administrative law judge for any period after March 1, 1979.

(7) "Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Department of Labor.

(8) "Director" means the Director of the Office of Workers' Compensation Programs of the Department of Labor (hereinafter OWCP).

(9) "Deputy commissioner" means a person appointed as provided in sections 39 and 40 of the LHWCA or his designee, authorized by the Director to make decisions and orders in respect to claims arising under the Acts.

(10) "Party" or "Party in Interest" means the Secretary or his designee and any person or business entity directly affected by the decision or order from which an appeal to the Board is taken.

(11) "Day" means calendar day.

(b) The definitions contained in this part shall not be considered to derogate from the definitions of terms in the respective Acts.

(c) The definitions pertaining to the Acts contained in the several parts of chapter VI of this title 20 shall be applicable to this chapter as is appropriate.

§ 801.3 Applicability of this part to 20 CFR Part 802.

Part 802 of title 20, Code of Federal Regulations, contains the rules of practice and procedure of the Board. This part 801, including the definitions and usages contained in § 801.2, is applicable to part 802 of this chapter as appropriate.

ESTABLISHMENT AND AUTHORITY OF THE BOARD

§ 801.101 Establishment.

By Pub. L. 92-576, 86 Stat. 1251, in an amendment made to section 21 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 921), there was established effective November 26, 1972, a Benefits Review Board, which is composed of members appointed by the Secretary of Labor.

§ 801.102 Review authority.

The Board is authorized, as provided in 33 U.S.C. 921(b), as amended, to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions or orders with respect to claims for compensation or benefits arising under the following Acts, as amended and extended:

(1) The Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 et seq.;

(2) The Defense Base Act (DBA), 42 U.S.C. 1651 et seq.;

(3) The District of Columbia Workmen's Compensation Act (DCWCA), 36 D.C. Code 501 et seq.;

(4) The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 et seq.;

(5) The Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 et seq.;

(6) Title IV, Section 415 and Part C of the Federal Mine safety and Health Act of 1977 (Pub. L. 95-164, 91 Stat. 1290) (formerly the FCMHSA of 1969) as amended by the Black Lung Benefits Reform Act of 1977 (92 Stat. 95), and the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, 92 Stat. 11.

§ 801.103 Organizational placement.

As prescribed by the statute, the functions of the Benefits Review Board are quasi-judicial in nature and involve review of decisions made in the course of the administration of the above statutes by the Employment Standards Administration in the Department of Labor. It is accordingly found appropriate for organizational purposes to place the Board in the Office of the Under Secretary and it is hereby established in that Office,

which shall be responsible for providing necessary funds, personnel, supplies, equipment, and records services for the Board.

§ 801.104 Operational rules.

The Under Secretary may promulgate such rules and regulations as may be necessary or appropriate for effective operation of the Benefits Review Board as an independent quasi-judicial body in accordance with the provisions of the statute.

MEMBERS OF THE BOARD

§ 801.201 Composition of the Board.

(a) The Board is composed of three members appointed by the Secretary from among individuals who are especially qualified to serve thereon.

(b) The member designated by the Secretary as Chairman of the Board shall serve as chief administrative officer of the Board.

(c) The two remaining members shall be the associate members of the Board.

(d) All members of the Board shall serve indefinite terms to be determined in the discretion of the Secretary.

§ 801.202 Interim appointments.

(a) *Acting Chairman.* In the event that the Chairman of the Board is temporarily unavailable to perform his or her duties as prescribed in this chapter VII, he, she, or the Board shall designate one associate member to serve as Acting Chairman for the duration of the Chairman's absence.

(b) *Temporary members.* In the event that a member of the Board is temporarily unable to carry out his or her responsibilities because of disqualification, illness, or for any other reason, the Under Secretary of Labor may, in his or her discretion, appoint a qualified individual to serve in the place of such member for the duration of that member's inability to serve.

§ 801.203 Disqualification of Board members.

(a) During the period in which the Chairman or the other members serve on the Board, they shall not consider any matter in which they were involved prior to such period nor shall they be involved, other than as Board members, in any matter being considered by the Board. After completion of their service on the Board, they shall not become involved in any matter which had been considered by them as Board members.

(b) No Board member shall conduct or participate in any proceeding in a case in which he or she is prejudiced or partial with respect to any party, or where he or she has any interest in the matter pending for decision before him or her. Notice of any objection which a party may have to any Board member who will participate in the proceeding shall be made by such party at the earliest opportunity. The Board member shall consider such objection and shall, in his or her discretion, either proceed with the case or withdraw.

ACTION BY THE BOARD

§ 801.301 Quorum; votes.

For the purpose of carrying out its functions under the Acts, two members of the Board shall constitute a quorum, and official action can be taken only on the concurring vote of at least two members.

§ 801.302 Procedural rules.

Procedural rules for performance by the Board of its review functions and for insuring an adequate record for any judicial review of its orders, and such amendments to the rules as may be necessary from time to time, shall be promulgated by the Benefits Review Board with the approval of the Under Secretary. Such rules shall incorporate and implement the procedural requirements of section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act.

§ 801.303 Location of Board's proceedings.

The Board shall hold its proceedings in Washington, D.C., unless for good cause the Board orders that proceedings in a particular matter be held in another location.

§ 801.304 Business hours.

The office of the Clerk of the Board at Washington, D.C., shall be open from 9 a.m. to 5:30 p.m. on all days, except Saturdays, Sundays, and legal holidays, for the purpose of receiving notices of appeal, petitions for review, other pleadings, motions, and other papers.

REPRESENTATION

§ 801.401 Representation before the Board.

On any issues requiring representation of the Secretary, the Director, Office of Workers' Compensation Programs, a deputy commissioner, or an administrative law judge before the Board, such representation shall be provided by attorneys designated by the Solicitor of Labor. Representation of all other persons before the Board shall be as provided by the rules of practice and procedure promulgated under § 801.302 (see part 802 of this chapter).

§ 801.402 Representation of Board in court proceedings.

Except in proceedings in the Supreme Court of the United States, any representation of the Benefits Review Board in court proceedings shall be by attorneys designated by the Solicitor of Labor.

PART 802—RULES OF PRACTICE AND PROCEDURE

Subpart A—General Provisions

INTRODUCTORY

Subpart B—Prereview Procedures

COMMENCING APPEAL: PARTIES

NOTICE OF APPEAL

INITIAL PROCESSING

Subpart C—Procedure for Review

ACTION BY THE BOARD

ORAL ARUGMENT BEFORE THE BOARD

AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 33 U.S.C. 901 et seq., 30 U.S.C. 901 et seq.

Subpart A—General Provisions

INTRODUCTORY

§ 802.101 Purpose and scope of this part.

(a) The purpose of part 802 is to establish the rules of practice and procedure governing the operation of the Benefits Review Board.

(b) Except as otherwise provided, the rules promulgated in this part apply to all appeals taken by any party from decisions or orders with respect to claims for compensation or benefits under the following Acts:

(1) The Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 et seq.;

(2) The Defense Base Act (DBA), 42 U.S.C. 1651 et seq.;

(3) The District of Columbia Workmen's Compensation Act (DCWCA), 36 D.C. Code 501 et seq.;

(4) The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 et seq.;

(5) The Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 et seq.;

(6) Title IV, section 415 and part C of the Federal Mine Safety and health Act of 1977 (Pub. L. 95-164, 91 Stat. 1290) (formerly the FCMHSA of 1969), as amended by the Black Lung Benefits Reform Act of 1977 (92 Stat. 95) and the Black Lung Benefits Revenue Act of 1977 (92 Stat. 11).

§ 802.102 Applicability of part 801 of this chapter.

Part 801 of this chapter VII sets forth rules of general applicability covering the composition, authority, and operation of the Benefits Review Board and definitions applicable to this chapter. The provisions of part 801 of this chapter are fully applicable to this part 802.

§ 802.103 Powers of the Board.

(a) *Conduct of proceedings.* Pursuant to section 27(a) of the LHWCA, the Board shall have power to preserve and enforce order during any proceedings for determination or adjudication of entitlement to compensation or benefits or for liability for payment thereof, and to do all things in accordance with law which may be necessary to enable the Board to effectively discharge its duties.

(b) *Contumacy.* Pursuant to section 27(b) of the LHWCA, if any person in proceedings before the Board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, the Board shall certify the facts to the Federal district court having jurisdiction in the place in which it is sitting (or to the U.S. District Court for the District of Columbia if it is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 802.104 Consolidation; severance.

(a) Cases may be consolidated for purposes of an appeal upon the motion of any party or upon the Board's own motion where there exist common parties, common questions of law or fact or both, or in such other circumstances as justice and the administration of the Acts require.

(b) Upon its own motion, or upon motion of any party, the Board may, for good cause, order any proceeding severed with respect to some or all issues or parties.

§ 802.105 Stay of payment pending appeal.

As provided in section 14(f) of the LHWCA and sections 415 and 422 of the Black Lung Benefits Act, the payment of the amounts required by an award of compensation or benefits shall not be stayed or in any way delayed pending final decision in any proceeding before the Board unless so ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer, coal mine operator or insurance carrier. Any order of the Board permitting any stay shall contain a specific finding, based upon evidence submittted to the Board and identified by reference thereto, that irreparable injury would result to such employer, operator or insurance carrier, and specify the nature and extent of the injury.

Subpart B—Prereview Procedures

COMMENCING APPEAL: PARTIES

§ 802.201 Who may file an appeal.

(a) *A party.* Any party adversely affected by a decision or order issued pursuant to one of the Acts may appeal that decision or order to the Board by filing a notice of appeal pursuant to this subpart. (See § 802.205 (b) and (c) for exceptions to this general rule.) A party who files a notice of appeal shall be deemed the petitioner.

(b) *Representative parties.* In the event that a party has not attained the age of 18, is not mentally competent, or is physically unable to file and pursue or defend an appeal, the Board may permit any legally appointed guardian, committee, or other appropriate representative to file and pursue or defend the appeal, or it may in its discretion appoint such representative for purposes of the appeal. The Board may require any legally appointed representative to submit evidence of that person's authority.

§ 802.202 Appearances, attorneys, legal counsel.

(a) Any party or intervenor or any representative duly authorized pursuant to § 802.201(b) may appear before and/or submit written argument to the Board by attorney or any other duly authorized person, including any representative of an employee organization. For each instance in which appearance before the Board is made by some person other than the party or his legal guardian, committee, or representative, there shall be filed with the Chairman of the Board a statement in writing, signed by the party to be represented, authorizing such assistance or representation.

(b) Any individual petitioner or respondent or his duly authorized representative pursuant to § 802.201(b) or an officer of any corporate party or a member of any partnership or joint venture which is a party may participate in the appeal on his or her own behalf, or on behalf of such business entity.

§ 802.203 Fees for services.

(a) No fee for services rendered on behalf of a claimant in the successful pursuit or successful defense of an appeal shall be valid unless approved pursuant to 33 U.S.C. 928, as amended.

(b) All fees for services rendered in the successful pursuit or successful defense of an appeal on behalf of a claimant shall be subject to the provisions and prohibitions contained in 33 U.S.C. 928, as amended.

(c) A fee application shall be complete in all respects, containing all of the following specific information:

(1) A complete statement of the extent and character of the necessary work done;

(2) The professional status of each person who performed services on behalf of the claimant (e.g., attorney; law clerk; or paralegal);

(3) The number of hours devoted by each person who performed services on behalf of the claimant and the dates on which such services were performed in each category of work;

(4) The normal billing rate for each person who performed services on behalf of the claimant. This rate shall be based on what is reasonable and customary in the area where the services were rendered for a person of that particular professional status.

(d) Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, the amount of benefits awarded, and when the fee is to be assessed against the claimant, shall also take into account the financial circumstances of the claimant. A fee shall not necessarily be computed by multiplying time devoted to work by an hourly rate.

(e) No contract pertaining to the amount of a fee shall be recognized.

(f) A fee application shall be served on all other parties. Any party may respond to the application within 10 days of his receipt of the application. The response shall be filed with the Board and served on all other parties.

NOTICE OF APPEAL

§ 802.204 Place for filing notice of appeal.

Any notice of appeal shall be sent by mail or otherwise presented to the Clerk of the Board in Washington, D.C. A copy shall be served on the deputy commissioner who filed the decision or order being appealed and on all other parties by the party who files a notice of appeal. Proof of service of the notice of appeal on the deputy commissioner and other parties shall be included with the notice of appeal.

§ 802.205 Time for filing.

(a) A notice of appeal, other than a cross-appeal or a protective appeal, must be filed within 30 days from the date upon which a decision or order has been filed in the office of the deputy commissioner pursuant to section 19(e) of the LHWCA or in such other office as may be established in the future (see §§ 702.349 and 725.478 of this title).

(b) (1) If a timely notice of appeal is filed by a party, any other party may initiate a cross-apppeal or protective appeal by filing a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time prescribed by paragraph (a) of this section, whichever period last expires.

(2) When a decision or order is favorable to a party (i.e., the prevailing party), but contains findings of fact or conclusions of law, or both, which are adverse to him or her, the prevailing party may become potentially aggrieved when the other party, who is in fact aggrieved, files a notice of appeal pursuant to paragraph (a) of this section. Therefore, the prevailing party may file an appeal pursuant to paragraph (b) of this section to protect its right to challenge the adverse findings of fact or conclusions of law, or both, in the same proceeding.

(c) Failure to file within the period specified in paragraph (a) or (b) of this section (whichever is applicable) shall foreclose all rights to review by the Board with respect to the case or matter in question. Any untimely appeal will be summarily dismissed by the Board for lack of jurisdiction.

§ 802.205A. Effect of motion for reconsideration on time for appeal.

(a) A timely motion for reconsideration of a decision or order of an administrative law judge or deputy commissioner shall suspend the running of the time for filing a notice of appeal.

(b) (1) In a case involving a claim filed under the Longshoremen's and Harbor Workers' Compensation Act or its extensions (see § 802.101(b)(1)-(5)), a timely motion for reconsideration for purposes of paragraph (a) of this section is one which is filed not later than 10 days from the date the decision or order was filed in the office of the deputy commissioner.

(2) In a case involving a claim filed under title IV of the Federal Mine Safety and Health Act, as amended (see § 802.101(b)(6)), a timely motion for reconsideration for purposes of paragraph (a) of this section is one which is filed not later than 30 days from the date the decision or order was served on all parties by the administrative law judge and considered filed in the office of the deputy commissioner (see §§ 725.478 and 725.479 (b), (c) of this title).

(c) If a motion for reconsideration is granted, the full time for filing an appeal commences on the date the subsequent decision or order on reconsideration is filed as provided in § 802.205.

(d) If a motion for reconsideration is denied, the full time for filing an appeal commences on the date the order denying reconsideration is filed as provided in § 802.205.

(e) If a timely motion for reconsideration of a decision or order of an administrative law judge or deputy commissioner is filed, any appeal to the Board, whether filed prior to or subsequent to the filing of the timely motion for reconsideration, shall be dismissed as premature. Following final action by the administrative law judge or deputy commissioner pursuant to either paragraph (c) or (d) of this section, a new notice of appeal shall be filed with the Clerk of the Board by any party who wishes to appeal.

§ 802.206 When a notice of appeal is considered to have been filed in the office of the Clerk of the Board.

(a) *Date of receipt.* (1) Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received in the office of the Clerk of the Board.

(2) Notices of appeal submitted to any other agency or subdivision of the Department of Labor or of the U.S. Government or any State government shall be promptly forwarded to the office of the Clerk of the Board. The notice shall be considered filed with the Clerk of the Board as of the date it was received by the other governmental unit if the Board finds that it is in the interest of justice to do so.

(b) *Date of mailing.* If the notice of appeal is sent by mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of appeal rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the mailing date.

§ 802.207 Contents of notice of appeal.

(a) A notice of appeal shall contain the following information:

(1) The full name and address of the petitioner;

(2) The full name of the injured, disabled, or deceased employee;

(3) The full names and addresses of all other parties, including, among others, beneficiaries, employers, coal mine operators, and insurance carriers where appropriate;

(4) The case file number which appears on the decision or order of the administrative law judge;

(5) The claimant's OWCP file number;

(6) The date of filing the decision or order being appealed;

(7) Whether a motion for reconsideration of the decision or order of the administrative law judge has been filed by any party (see § 802.209); and

(8) The name and address of the attorney or other person, if any, who is representing the petitioner.

(b) Paragraph (a) of this section notwithstanding, any written communication which reasonably permits identification of the decision from which an appeal is sought and the parties affected or aggrieved thereby, shall be sufficient notice for purposes of § 802.205.

(c) In the event that identification of the case is not possible from the information submitted, the Clerk of the Board shall so notify the petitioner and shall give the petitioner a reasonable time to produce sufficient information to permit identification of the case. For purposes of § 802.205, the notice shall be deemed to have been filed as of the date the insufficient information was received.

§ 802.208 Transmittal of record to the Board.

Upon receipt of a copy of the notice of appeal or upon request of the Board, the deputy commissioner or other office having custody of such record shall immediately forward to the Clerk of the Board the official record of the case, which record includes the transcript or transcripts of all formal proceedings with exhibits, all decisions and orders rendered in the case.

INITIAL PROCESSING

§ 802.209 Acknowledgement of notice of appeal.

Upon receipt by the Board of a notice of appeal, the Clerk of the Board shall as expeditiously as possible notify the petitioner and all other parties and the Solicitor of Labor, in writing, that a notice of appeal has been filed.

§ 802.210 Petition for review.

(a) Within 30 days after the receipt of an acknowledgment of a notice of appeal issued pursuant to § 802.209, the petitioner shall submit a petition for review to the Board and shall serve copies of it, together with accompanying documents, on all parties and the Solicitor of Labor. A petition for review shall contain a statement indicating the specific contentions of the petitioner and describing with particularity the substantial questions of law or fact to be raised by the appeal. Failure to submit a petition for review within the 30-day period described in this section may, in the discretion of the Board, cause the appeal to be deemed abandoned (see § 802.402).

(b) Each petition for review shall be accompanied by supporting brief, memorandum of law, or other statement.

§ 802.211 Response to petition for review.

Within 30 days after the receipt of a petition for review, each party upon whom it was served may submit to the Board a brief, memorandum, or other statement in response to it.

§ 802.212 Reply briefs.

Within 20 days after the receipt of a brief, memorandum, or statement submitted in response to the petition for review pursuant to § 802.211, any party upon whom it was served may file a brief, memorandum, or other statement in reply to it.

§ 802.213 Intervention.

(a) If a person or legal entity shows in a written petition to intervene that his, her, or its rights are affected by any proceeding before the Board, the Board may permit that person or legal entity to intervene in the proceeding and to participate within limits prescribed by the Board.

(b) The petition to intervene shall state precisely (1) the rights affected, and (2) the nature of any argument he, she, or it intends to make.

§ 802.214 Additional briefs.

Additional briefs may be filed or ordered in the discretion of the Board and shall be submitted within time limits specified by the Board.

§ 802.215 Service and form of papers.

(a) All papers filed with the Board, including notices of appeal, petitions for review, briefs and motions, shall be secured at the top and shall have a caption, title, signature of the party (or his attorney or other representative), date of signature, and certificate of service.

(b) For each paper filed with the Board, the original and three legible copies shall be submitted.

(c) A copy of any paper filed with the Board shall be served on each party and the Solicitor of Labor, by the party submitting the paper.

(d) Any paper required to be given or served to or by the Board or any party shall be served by mail or otherwise presented. All such papers served shall be accompanied by a certificate of service.

§ 802.216 Waiver of time limitations for filing.

(a) The time periods specified for submitting papers described in this part, except that for submitting a notice of appeal, may be enlarged for a reasonable period when in the judgment of the Board an enlargement is warranted.

(b) Any request for an enlargement of time pursuant to this section shall be directed to the Clerk of the Board and must be received by the Clerk on or prior to the date on which the paper is due.

(c) Any request for an enlargement of time pursuant to this section shall be submitted in writing in the form of a motion, shall specify the reasons for the request, and shall specify the date to which an enlargement of time is requested.

(d) Absent exceptional circumstances, no more than one enlargement of time shall be granted to each party.

(e) Absent a timely request for an enlargement of time pursuant to this section and the Board's granting that request, any paper submitted to the Board outside the applicable time period specified in this part shall be accompanied by a separate motion stating the reasons therefore and requesting that the Board accept the paper although filed out of time.

(f) When a paper filed out of time is accepted by the Board, the time for filing a response shall begin to run from the date of a party's receipt of the Board's order disposing of the motion referred to in paragraph (e) of this section.

§ 802.217 Failure to file papers; order to show cause.

(a) Failure to file any paper when due pursuant to this part, may, in the discretion of the Board, constitute a waiver of the right to further participation in the proceedings.

(b) When a petition for review and brief has not been submitted to the Board within the time limitation prescribed by § 802.210, or within an enlarged time limitation granted pursuant to § 802.216, the petitioner shall be ordered to show cause to the Board why his or her appeal should not be dismissed pursuant to § 802.402.

§ 802.218 Motions to the Board.

(a) An application to the Board for an order shall be by motion in writing. A motion shall state with particularity the grounds therefor and shall set forth the relief or order sought.

(b) A motion shall be a separate document and shall not be incorporated in the text of any other paper filed with the Board, except for a statement in support of the motion. If this paragraph is not complied with, the Board will not consider and dispose of the motion.

(c) If there is no objection to a motion in whole or in part by another party to the case, the absence of an objection shall be stated on the motion.

(d) The rules applicable to service and form of papers, § 802.215, shall apply to all motions.

(e) Within 10 days of the receipt of a copy of a motion, a party may file a written response with the Board.

(f) As expeditiously as possible following receipt of a response to a motion or expiration of the response time provided in paragraph (e) of this section, the Board shall issue a dispositive order.

§ 802.219 Party not represented by an attorney: informal procedure.

If a party to an appeal is not represented by an attorney, the Board may prescribe an informal procedure in such case to be followed by such party.

§ 802.220 Computation of time.

(a) In computing any period of time prescribed or allowed by these rules, by direction of the Board, or by any applicable statute which does not provide otherwise, the day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(b) Whenever a paper is served on the Board or on any party by mail, paragraph (a) of this section will be deemed complied with if the envelope containing the paper is postmarked within the time period allowed, computed as in paragraph (a) of this section. If there is no postmark, or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the mailing date.

(c) A waiver of the time limitations for filing a paper, other than a notice of appeal, may be requested by proper motion filed in accordance with §§ 802.216 and 802.218.

Subpart C—Procedure for Review

Action by the Board

§ 802.301 Scope of review.

The Benefits Review Board is not empowered to engage in a de novo proceeding or unrestricted review of a case brought before it. The Board is authorized to review the findings of fact and conclusions of law on which the decision or order appealed from was based. Such findings of fact and conclusions of law may be set aside only if they are not, in the judgment of the Board, supported by substantial evidence in the record considered as a whole or in accordance with law.

§ 802.302 Docketing of appeals.

(a) *Maintenance of dockets.* A docket of all proceedings shall be maintained by the Board. Each proceeding shall be assigned a number in chronological order upon the date on which a notice of appeal is received. Correspondence or further applications in connection with any pending case shall refer to the docket number of that case.

(b) *Inspection of docket; publication of decision.* The docket of the Board shall be open to public inspection. The Board shall publish its decisions in a form which is readily available for inspection, and shall allow the public to inspect its decisions at the permanent location of the Board.

Oral Argument Before the Board

§ 802.303 Decision; no oral argument.

(a) In the event that no oral argument is ordered pursuant to § 802.306, the Board shall proceed to review the record of the case as expeditiously as possible after all briefs, supporting statement, and other pertinent documents have been received.

(b) Each case shall be considered in the order in which it becomes ready for decision, regardless of docket number, although for good cause shown, upon the filing of a motion to expedite by a party, the Board may advance the order in which a particular case is to be considered.

(c) The Board may advance an appeal on the docket on its own motion if the interests of justice would be served by so doing.

§ 802.304 Purpose of oral argument.

Oral argument may be held by the Board in any case:

(a) When there is a novel issue not previously considered by the Board; or

(b) When in the interests of justice oral argument will serve to assist the Board in carrying out the intent of any of the Acts; or

(c) To resolve conflicting decisions by administrative law judges on a substantial question of law.

§ 802.305 Request for oral argument.

(a) During the pendency of an appeal, but not later than the expiration of 20 days from the date of receipt of the response brief provided by § 802.211, any party may request oral argument. The Board on its own motion may order oral argument at any time.

(b) A request for oral argument shall be submitted in the form of a motion, specifying the issues to be argued and justifying the need for oral argument (see § 802.218).

(c) The party requesting oral argument shall set forth in the motion suggested dates and alternate cities convenient to the parties when and where they would be available for oral argument.

§ 802.306 Action on request for oral argument.

As expeditiously as possible after the date upon which a request for oral argument is received, the Board shall determine whether the request shall be granted or denied.

§ 802.307 Notice of oral argument.

(a) In cases where a request for oral argument has been approved or where oral argument has been ordered, the Board shall give all parties a minimum of 30 days' notice, in writing, by mail, of the scope of argument and of the time when, and place where, oral argument will be held.

(b) Once oral argument has been scheduled by the Board, continuances shall not be granted except for good cause shown by a party, such as in cases of extreme hardship or where attendance of a party or his or her representative is mandated at a previously scheduled judicial proceeding. Unless the ground for the request arises thereafter, requests for continuances must be received by the Board at least 15 days before the scheduled date of oral argument, must be served upon the other parties and must specify good cause why the requesting party cannot be available for oral argument.

(c) The Board may cancel or reschedule oral argument on its own motion at any time.

§ 802.308 Conduct of oral argument.

(a) Oral argument shall be held in Washington, D.C., unless the Board orders otherwise, and shall be conducted at a time reasonably convenient to the parties. For good cause shown, the Chairman or Acting Chairman may, in his or her discretion, postpone an oral argument to a more convenient time.

(b) The proceedings shall be conducted under the supervision of the Chairman or Acting Chairman, who shall regulate all procedural matters arising during the course of the argument.

(c) Within the discretion of the Board, oral argument shall be open to the public and may be presented by any party, representative, or duly authorized attorney. Presentation of oral argument may be denied by the Board to a party who has not significantly participated in the appeal prior to oral argument.

(d) The Board shall determine the scope of any oral argument presented and shall so inform the parties in its notice scheduling oral argument pursuant to § 802.307.

(e) The Board in its discretion shall determine the amount of time allotted to each party for argument and rebuttal.

§ 802.309 Absence of parties.

The unexcused absence of a party or his or her authorized representative at the time and place set for argument shall not be the occasion for delay of

the proceeding. In such event, argument on behalf ot other parties may be heard and the case shall be regarded as submitted on the record by the absent party. The Chairman or Acting Chairman may, with the consent of the parties present, cancel the oral argument and treat the appeal as submitted on the written record.

Subpart D—Completion of Board Review

DISMISSALS

§ 802.401 Dismissal by application of party.

(a) At any time prior to the issuance of a decision by the Board, the petitioner may move that the appeal be dismissed. If granted, such motion for dismissal shall be granted with prejudice to the petitioner.

(b) At any time prior to the issuance of a decision by the Board, any party or representative may move that the appeal be dismissed.

§ 802.402 Dismissal by abandonment.

(a) Upon motion by any party or representative or upon the Board's own motion, an appeal may be dismissed upon its abandonment by the party or parties who filed the appeal. Within the discretion of the Board, a party may be deemed to have abandoned an appeal if neither the party nor his representative participates significantly in the review proceedings.

(b) An appeal may be dismissed on the death of a party only if the record affirmatively shows that there is no person who wishes to continue the action and whose rights may be prejudiced by dismissal.

DECISION OF THE BOARD

§ 802.403 Issuance of decisions; service.

(a) The Board shall issue written decisions as expeditiously as possible after the completion of review proceedings before the Board. The transmittal of the decision of the Board shall indicate the availability of judicial review of the decision under section 21(c) of the LHWCA when appropriate.

(b) The original of the decision shall be filed with the Clerk of the Board. A copy of the Board's decision shall be sent by certified mail or otherwise presented to all parties to the appeal and the Director. The record on appeal, together with a transcript of any oral proceedings, any briefs or other papers filed with the Board, and a copy of the decision shall be returned to the appropriate deputy commissioner for filing.

(c) Proof of service of Board decisions shall be certified by the Clerk of the Board or by another employee in the office of the Clerk of the Board who is authorized to certify proof of service.

§ 802.404 Scope and content of Board decisions.

(a) In its decision the Board shall affirm, modify, or set aside the decision or order appealed from, and may remand the case for action or proceedings consistent with the decision of the Board. The consent of the parties shall not be a prerequisite to a remand ordered by the Board.

(b) In appropriate cases, such as where the issues raised on appeal have been thoroughly discussed and disposed of in prior cases by the Board or the courts, or where the findings of fact and conclusions of law are both correct and adequately discussed, the Board in its discretion may issue a brief, summary decision in writing, disposing of the appeal.

(c) In cases which cannot be disposed of as in paragraph (b) of this section, a full, written decision discussing the issues and applicable law shall be issued.

802.405 Remand.

(a) *By the Board.* Where a case is remanded such additional proceedings shall be initiated and such other action shall be taken as is directed by the Board. Upon completion of all action deemed appropriate, a decision in writing shall be issued by the administrative law judge or deputy commissioner to whom the case was remanded as expeditiously as possible which contains findings of fact and conclusions of law, or when so directed by the Board, the case shall be returned to the Board by the administrative law judge with a recommended decision. A copy of the recommended decision shall be mailed by the Board to each party at his or her last known address. When a recommended decision is issued, each party shall be notified of his or her right to file with the Board within 20 days from the date of mailing of the recommended decision, briefs, or other written statements of exceptions and allegations as to applicable fact and law. Upon request of any party made within such 20-day period, a reasonable enlargement of time for filing such briefs or statements may be granted and upon a showing of good cause such period may be extended, as appropriate.

(b) *By a court.* Where a case has been remanded by a court, the Board may proceed in accordance with the court's mandate to issue a decision or it may in turn remand the case to an administrative law judge or deputy commissioner with instructions to take such action as is ordered by the court and any additional necessary action and upon completion thereof to return the case with a recommended decision to the Board for its action.

§ 802.406 Finality of Board decisions.

A decision rendered by the Board pursuant to this subpart shall become final 60 days after the issuance of such decision unless a written petition praying that the order be modified or set aside, pursuant to section 21(c) of the LHWCA, is filed in the appropriate U.S. court of appeals prior to the expiration of the 60-day period herein described, or unless a timely request for reconsideration by the Board has been filed as provided in § 802.407.

RECONSIDERATION

§ 802.407 Reconsideration of Board decisions—generally.

(a) Any party in interest may, within 10 days from the filing of a decision pursuant to § 802.403(b), request reconsideration of such decision.

(b) Failure to file a request for reconsideration shall not be deemed a failure to exhaust administrative remedies.

§ 802.408 Notice of request for reconsideration.

(a) In the event that a party requests reconsideration of a decision or order, he or she shall do so in writing, in the form of a motion, stating the supporting rationale for the request, and include any material pertinent to the request.

(b) The request shall be sent by mail, or otherwise presented, to the Clerk of the Board. Copies shall be served on all other parties.

§ 802.409 Grant or denial of request.

All requests for reconsideration shall be reviewed by the Board and shall be granted or denied in the discretion of the Board.

JUDICIAL REVIEW

§ 802.410 Judicial review of Board decisions.

(a) Within 60 days after a decision by the Board has been filed pursuant to § 802.403(b), any party adversely affected or aggrieved by such decision may file a petition for review with the appropriate U.S. court of appeals pursuant to section 21(c) of the LHWCA.

(b) The Director, OWCP, as designee of the Secretary of Labor responsible for the administration and enforcement of the statutes listed in § 802.101, shall be deemed to be the proper party on behalf of the Secretary of Labor in all review proceedings conducted pursuant to section 21(c) of the LHWCA.

§ 802.411 Certification of record for judicial review.

The record of a case including the record of proceedings before the Board shall be transmitted to the appropriate court pursuant to the rules of such court.

[FR Doc. 78-25952 Filed 9-18-78; 8:45 am]

Federal Register

TUESDAY, SEPTEMBER 19, 1978
PART V

ENVIRONMENTAL PROTECTION AGENCY

■

ELECTRIC UTILITY STEAM GENERATING UNITS

Proposed Standards of Performance and Announcement of Public Hearing on Proposed Standards

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 967-1]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The proposed standards of performance would limit emissions of sulfur dioxide (SO_2), particulate matter, and nitrogen oxides (NO_x) from new, modified, and reconstructed electric utility steam generating units capable of combusting more than 73 megawatts (MW) heat input (250 million Btu/hour) of fossil fuel. A new reference method for determining continuous compliance with SO_2 and NO_x standards is also proposed. The Clean Air Act Amendments of 1977 require EPA to revise the current standards of performance for fossil fuel-fired stationary sources. The intended effect of this proposal is to require new, modified, and reconstructed electric utility steam generating units to use the best demonstrated systems of continuous emission reduction and to satisfy the requirements of the Clean Air Act Amendments of 1977.

The principal issue associated with this proposal is whether electric utility steam generating units firing low-sulfur-content coal should be required to achieve the same percentage reduction in potential SO_2 emissions as those burning higher sulfur content coal. Resolving this question of full versus partial control is difficult because of the significant environmental, energy, and economic implications associated with each alternative. The Administrator has not made a decision on which of the alternatives should be adopted in the final standard and solicits additional data on these impacts before promulgating the final regulation.

The conference report for the Clean Air Act Amendments of 1977 says in pertinent part:

* * * in establishing a national percent reduction for new fossil fuel-fired sources, the conferees agreed that the Administrator may, in his discretion, set a range of pollutant reduction that reflects varying fuel characteristics. Any departure from the uniform national percentage reduction requirement, however, must be accompanied by a finding that such a departure does not undermine the basic purposes of the House provision and other provisions of the act, such as maximizing the use of locally available fuels.

This proposal sets forth the full, or uniform control alternative and sets forth other alternatives for comment as well. It should be noted that the Clean Air Act provides that new source performance standards apply from the date they are proposed and it would be easier for powerplants that start construction during the proposal period to scale down to partial control than to scale up to full control should the final standard differ from the proposal.

The final decision on the appropriate level of control will be made only after analyses are completed and public comments evaluated. Because the decision will require a careful balancing of environmental, energy, and economic impacts, the Administrator believes that extensive public involvement is essential. Comments on the factual basis for the standards and suggestions on the interpretation of data are actively solicited.

DATES: *Comments.* Comments must be received on or before November 20, 1978.

Public hearing. A separate notice is published in today's FEDERAL REGISTER announcing the time and place of a public hearing on the proposed standards.

ADDRESSES: *Comments.* Comments should be submitted to Jack R. Farmer, Chief, Standards Development Branch (MD-13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, N.C. 27711.

Background information. The background information documents (refer to section on studies) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park N.C. 27711, telephone 919-541-2777. In addition, a copy is available for inspection in the Office of Public Affairs in each Regional Office, and in EPA's Central Docket Section in Washington, D.C.

Docket. Docket No. OAQPS-78-1, containing all supporting information used by EPA in developing the proposed standards, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, room 2903B, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (section 307(d)(a)).

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5271.

SUPPLEMENTARY INFORMATION: Summary of proposed standards; rationale; background; applicability; SO_2 standards; particulate matter standards; NO_x standards; studies; performance testing; and miscellaneous.

SUMMARY OF PROPOSED STANDARDS

APPLICABILITY

The proposed standards would apply to electric utility steam generating units that are capable of firing more than 73 MW (250 million Btu/hour) heat input of fossil fuel and for which construction is commenced after September 18, 1978.

SO_2 EMISSIONS

The proposed SO_2 standards would limit SO_2 emissions to 520 ng/J (1.2 lb/million Btu) heat input for solid fuel (except for 3 days per month) and 340 ng/J (0.80 lb/million Btu) for liquid and gaseous fuel (except for 3 days per month). Also, uncontrolled SO_2 emissions from solid, liquid, and gaseous fuel would be required to be reduced by 85 percent. Compliance with the SO_2 emission limitation and percent reduction would be determined on a 24-hour daily basis. The 85-percent requirement would apply at all times except for 3 days per month, when only a 75-percent SO_2 reduction requirement would apply. The percent reduction requirement would not apply if SO_2 emissions into the atmosphere are less than 86 ng/J (0.20 lb/million Btu) heat input.

The percent reduction would be computed on the basis of overall SO_2 removed by all types of SO_2 and sulfur removal technology including flue gas desulfurization (FGD) systems and fuel pretreatment systems (such as coal cleaning, coal gasification, and coal liquefaction). Sulfur removed by a coal pulverizer or in bottom ash and flyash would also be included in the computation.

PARTICULATE MATTER EMISSIONS

The proposed particulate matter emission standard would limit emissions to 13 ng/J (0.030 lb/million Btu) heat input. The proposed opacity standard would limit the opacity of emissions to 20 percent (6-minute average). If an affected facility exhibits

opacity levels higher than 20 percent, while at the same time demonstrating compliance with the particulate matter standard, then a source-specific opacity standard may be established under 40 CFR 60.11(e).

NO_x EMISSIONS

The proposed NO_x emission standards vary according to fuel characteristics as follows:

(1) 210 ng/J (0.50 lb/million Btu) heat input from the combustion of subbituminous coal, shale oil, or any solid, liquid, or gaseous fuel derived from coal.

(2) 260 ng/J (0.60 lb/million Btu) heat input from the combustion of bituminous coal.

In addition, separate standards are being proposed for gaseous and liquid fuels not derived from coal, lignite from certain areas, and coal refuse.

RATIONALE

SO_2 STANDARDS

Under section 111(a) of the Act, a standard of performance must reflect the degree of emission limitation and percentage reduction achievable through the application of the best technological system of continuous emission reduction taking into consideration cost and any nonair quality health and environmental impacts and energy requirements. In addition, credit is to be given for any cleaning of the fuel, or reduction in pollutant characteristics of the fuel, after mining and prior to combustion.

The 1977 amendments substantially changed the criteria for regulating new powerplants by requiring the application of technological methods of control to minimize SO_2 emissions and to maximize the use of locally available coals. Under the statute, these goals are to be achieved through revision of the standards of performance for new fossil fuel-fired stationary sources to specify (1) an emission limitation and (2) a percentage reduction requirement. According to legislative history accompanying the amendments, the percentage reduction requirement should be applied uniformly on a nationwide basis, unless the Administrator finds that varying requirements applied to coals of differing characteristics will not undermine the objectives of the House bill and other Act provisions.

The principal issue to be resolved in this rulemaking is whether a plant burning low-sulfur coal should be required to achieve the same percentage reduction in potential SO_2 emissions as those burning higher sulfur content coals.

Prior to framing alternative SO_2 standards, EPA evaluated control technology in terms of performance, costs, energy requirements, and environmental impacts. EPA has concluded that the proposed emission limits and control efficiencies are achievable with well-designed, maintained, and operated flue gas desulfurization systems but has not determined whether uniform application of these requirements is necessary to satisfy section 111 of the Act. EPA's final decision on this issue must be based on an assessment of the national, regional, and local environmental (air, water, and solid waste), economic, and energy impacts of both the uniform percentage reduction requirement and the other alternatives under consideration.

Toward this end, EPA performed extensive analyses of the potential impacts associated with each of the alternatives at the national, regional, and plantsite levels. Economic models were used for the purpose fo forecasting the nature of the utility industry in future years. Evaluation of the data revealed that the results predicted by the model were very sensitive to such assumptions as the rate of growth predicted for the industry, coal and oil prices, and transportation costs. Forecasts which assume low growth in electricity demand and high oil and rail transportation prices resulted in modeled estimates which show relatively small differences in the impacts of the alternatives at the national level. On the other hand, if assumptions of high growth in demand for electricity are combined with low oil and rail transportation prices, more significant economic, energy, and environmental impacts are predicted.

The Agency believes that it would be inappropriate to make a decision on the choice between the full and partial control alternatives without additional analyses of the modeling results. The model is being refined, with particular emphasis being placed on the assumptions used. Comment on the appropriateness of the selected assumptions and the relative significance of environmental, energy, and economic impacts are invited.

At the plant level, the partial control alternative would result in substantiallymore SO_2 emissions than full control when low-sulfur coal is fired. For example, a Western plant burning low-sulfur coal could emit as much as four times as much SO_2 under the partial control alternative as under full control. However, there are many plant locations where the cost of mandated emission control equipment can be an important factor in the utility's choice of coal to be fired. If partial control is permitted when low-sulfur coal is burned, the lower capital and operating costs associated with the control equipment may justify a decision to use more expensive low-sulfur coal. The same plant might have chosen cheaper high-sulfur coal if the same control equipment were required for all coals. In such a case, a partial control approach could result in lower emissions than a full control approach. For example, a 500 MW low-sulfur coal plant with partial control might emit 10,000 tons per year while the same plant burning high-sulfur coal under full control might emit some 15,000 tons per year.

The benefits of such shifts from high- to low-sulfur coal must be compared to the costs associated with foregoing increased local coal production. When considering local coal impacts, it must be noted that coal production will increase over current levels in all areas of the country under all control alternatives. This means local coal production impacts will affect the level of new production rather than displace existing production. The Administrator seeks comment on the relative significance of new coal production versus existing coal production as it pertains to the consideration of coal impacts in the final decision.

The economic impact of the standard can be viewed in a number of ways, depending on the economic measures selected and the manner in which they are used. While the capital and operating costs of control can be shown to be significant in absolute terms (e.g., billions of dollars), they can also be shown to be relatively small when compared to the hundreds of billions of dollars in new capital investment planned by the industry or to the approximately $100 billion annual revenue requirement projected for 1990. If the impact is considered in terms of monthly cost to the average consumer, the alternatives do not appear to have a major impact. However, when computed as a total cost to an average family over a 30- to 40-year period, the impacts can appear much more significant. In view of this, the Administrator solicits comments on which economic indicators are most appropriate and how the comparisons should be made.

A consideration in establishing the new source performance standards for powerplants is their relationship to the prevention of significant deterioration (PSD) program. Since virtually all new powerplants will have to comply with both the standards of performance and PSD requirements, concern has been expressed that the case-by-case best available control technology review under PSD creates the potential for prolonged public debate as to the adequacy of the control proposed for a given source. The likelihood of such debate, and the associated delays, would increase if a less stringent standard of performance is adopted. Consideration must also be given to the impact that a source complying

with the revised standard of performance will have on the air quality increment. A source with lower emissions will use less of the available increment, thus providing a greater margin for growth. As mentioned above, the impact of this standard can be either to increase or to decrease emission rates for a given plant depending on the selection of the coal to be fired. In view of the above, the Administrator solicits comments as to how much weight should be given to PSD considerations when establishing the final standard of performance requirement.

PARTICULATE MATTER STANDARDS

The proposed standards would limit the emissions of particulate matter to 13 ng/J (0.03 lb/million Btu) heat input and would require a 99-percent reduction in uncontrolled emissions from solid fuels and a 70-percent reduction for liquid fuels. No particulate matter control would be necessary for units firing gaseous fuels alone, and thus a percent reduction would not be required. The 20-percent opacity (6-minute average) standard that is currently applicable to steam electric generating units (40 CFR Part 60, Subpart D) would be retained under the proposed standard to insure proper operation and maintenance of the particulate matter control system.

The proposed standards are based on the performance of a well designed and operated baghouse or electrostatic precipitator (ESP). EPA has determined that these control systems are the best adequately demonstrated systems of continuous emission reduction (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact, and energy requirements).

This determination was reached after analyzing emission test results from steam generators firing both high- and low-sulfur coal and employing either ESP's or baghouses. Although the baghouse data were based on units of less than 44 MW, EPA has concluded that there are no technological barriers that would preclude their application on larger units. In addition, a number of large instalations are now under construction, and a 350-MW facility equipped with a baghouse for particulate emission control recently began operation.

EPA considered a standard of 21 ng/J (0.05 lb/million Btu) which could be met by wet particulate matter scrubbers in addition to baghouses and ESPs, but rejected this option because using scrubbers could increase emissions of fine particulate matter. A 21 ng/J standard would result in 60 percent higher emissions which could have an adverse effect on visibility. On the other hand, an advantage to allowing the use of scrubbers is that a single scrubber may be able to control both SO_2 and particulate matter.

It should be noted that there were no plants available for testing at which a well designed ESP or baghouse was followed by an FGD system; thus, the proposed standards are based on emission measurements taken at the particulate matter control device discharge prior to any FGD unit. Since there is the potential for an FGD system to affect particulate emissions, EPA is continuing to assess this situation. Of particular concern is the potential contribution of sulfuric acid mist to the measured particulate matter emissions. This issue is discussed in more detail under the particulate matter standards section of this preamble. EPA solicits comments and available data on this matter.

The proposed limit of 13 ng/J (0.03 lb/million Btu) will effectively preclude the use of ESPs on facilities using low sulfur coal and require baghouse control. DOE and the utility industry believe that baghouse technology has not been demonstrated sufficiently to require its use on utility size facilities. Because of this, DOE recommends that the standard be no less than 21 ng/J (0.05 lb/million Btu) while the industry recommends a standard of 34 ng/J (0.08 lb/million Btu). EPA requests comments on this this recommendation as well as on EPA's proposal.

NO_x STANDARDS

The proposed NO_x standards for different fuels are based on the emission limitations achievable through combustion modification techniques. Combustion modification limits NO_x formation in the boiler by reducing flame temperatures and by minimizing the availability of oxygen during combustion. The levels to which NO_x emissions can be reduced with combustion modification depend upon the type of fuel burned, boiler design, and boiler operating practice.

When considering these factors, EPA concluded that a uniform standard could not be applied to all fossil fuels or boiler types. In addition, EPA took into consideration the adverse side effects of low NO_x operation such as boiler tube wastage. As a result, different requirements were developed for bituminous and subbituminous coals.

The limitations for coal-derived liquid and gaseous fuels and shale oil are based on limits achievable with subbituminous coals. The limitations for liquid and gaseous fuels are the same as those promulgated in 1971 under 40 CFR part 60 subpart D for large steam generators. These requirements were not reexamined since few, if any, new oil- or gas-fired power plants are expected to be built. The recently promulgated limitations for lignite combustion (43 FR 9276) have been incorporated into these regulations without change because no new data have become available since their promulgation. Similarly, the exemption for combustion of coal refuse has also been retained.

BACKGROUND

In December 1971, under section 111 of the Clean Air Act, the Administrator promulgated standards of performance to limit emissions of SO_2, particulate matter, and NO_x from new, modified, and reconstructed fossil-fuel-fired steam generators (40 CFR 60.40 et seq.). Since that time, the technology for controlling these emissions has improved, but emissions of SO_2, particulate matter, and NO_x continue to be a national problem. In 1976, steam electric generating units contributed 24 percent of the particulate matter, 65 percent of the SO_2, and 29 percent of the NO_x emissions on a national basis.

The utility industry is expected to have continued and significant growth; approximately 300 new fossil-fuel-fired power plant boilers are to begin operation within the next 10 years. Associated with utility growth is the continued long-term increase in utility coal consumption from some 650 million tons/year in 1975 to between 1,400 and 1,800 million tons/year in 1990. Under the current performance standards for power plants, national SO_2 emissions are projected to increase approximately 15 to 16 percent between 1975 and 1990.

Impacts will be more dramatic on a regional basis. For example, in the absence of more stringent controls, utility SO_2 emissions are expected to increase tenfold to over 2 million tons by 1990 in the West South Central region of the country (Texas, Oklahoma, Arkansas, and Louisiana).

EPA was petitioned on August 6, 1976, by the Sierra Club and the Oljato and Red Mesa Chapters of the Navaho Tribe to revise the SO_2 standard so as to require a 90 percent reduction in SO_2 emissions from all coal-fired power plants. The petition included information to support the claim that advances in technology since 1971 called for a revision of the standard, and EPA agreed to investigate the matter thoroughly. On January 27, 1977 (42 FR 5121), EPA announced that it had initiated a study to complete the technological, economic, and other documentation needed to determine to what extent the SO_2 standard for fossil-fuel-fired steam generators should be revised.

On August 7, 1977, President Carter signed into law the Clean Air Act Amendments of 1977. The provisions under section 111(b)(6) of the Act, as

amended, require EPA to revise the standards of performance for fossil-fuel-fired electric utility steam generators within 1 year after enactment.

After the Sierra Club petition of August 1976, EPA initiated studies to review the advancement made on pollution control systems at power plants. These studies were continued following the amendment of the Clean Air Act. In order to meet the schedule established by the Act, a preliminary assessment of the ongoing studies was made in late 1977. A National Air Pollution Control Techniques Advisory Committee (NAPCTAC) meeting was held on December 13 and 14, 1977, to present EPA preliminary data. The meeting was open to the public and comments were solicited.

The Clean Air Act Amendments of 1977 required the standards to be revised by August 7, 1978. When it appeared that EPA would not meet this schedule, the Sierra Club filed a complaint on July 14, 1978, with the U.S. District Court for the District of Columbia requesting injunctive relief to require, among other things, that EPA propose the revised standards by August 7, 1978. A consent order was developed and issued by the court requiring the EPA Administrator to (1) deliver the proposal package to the office of the Federal Register by September 12, 1978, and (2) promulgate the final standards within 6 months after proposal

The purpose of this proposal is to respond to the petition of the Navaho Tribe and Sierra Club, and to initiate the rulemaking required under section 111(b)(6) of the Act.

APPLICABILITY

The proposed standards would apply to all electric utility steam generating units (1) capable of firing more than 73 MW (250 million Bty/per hour) heat input of fossil fuel (approximately 25 MW of electrical energy output) and (2) for which construction is commenced after September 18, 1978.

On December 23, 1971, EPA promulgated, under subpart D of 40 CFR Part 60, standards of performance for fossil-fuel-fired steam generators used in electric utility and large industrial applications. The proposed standards will not apply to electric utility steam generating units originally subject to those standards (subpart D) unless the affected facilities are modified or reconstructed.

ELECTRIC UTILITY STEAM GENERATING UNITS

An electric utility steam generating unit is defined as any steam electric generating unit that is physically connected to a power distribution system and is constructed for the purpose of selling for use by the general public more than one-third of its maximum electrical generating capacity. Any steam that could be sold to produce electrical power for sale is also included when determining applicability of the standard.

INDUSTRIAL FACILITIES

Industrial steam electric generating units with heat input above 73 MW that are constructed for the purpose of selling more than one-third of their maximum electrical generation capacity (or steam generating capacity used to produce electricity for sale) would be covered under the proposed standards. Industrial steam generating units with a heat input above 73 MW that produce only steam or that were constructed for the purpose of selling less than one-third of their electric generation capacity are not covered by the proposed standards, but will continue to be covered under subpart D.

COGENERATION

Electric cogeneration units (steam generating units that would produce steam used for electric generation and process heat) would be considered electric utility steam generating units if they: (1) Were capable of combusting more than 73 MW of fossil fuel and (2) would be physically connected to a power distribution system for the purpose of selling for use by the general public more than one-third of their maximum electrical generating capacity. Cogeneration facilities that would produce power only for "in-house" industrial use would be considered industrial boilers and would be covered under subpart D if applicable.

RESOURCE RECOVERY UNITS

Steam electric generating units that combust nonfossil fuels such as wood residue, sewage sludge, waste material, or municipal refuse (either aone or in combination with fossil fuel) would only be covered by the proposed standards if the steam generating unit is capable of firing more than 73 MW of fossil fuel. If only municipal refuse were fired and the unit was not capable of being fired with more than 73 MW of fossil fuel, the unit would be considered an incinerator and the standards under subpart E would apply. Similarly, the standards under subpart O for sewage treatment plants would apply if only sewage sludge were burned.

COMBINED-CYCLE GAS TURBINES

The proposed standards would cover boiler emissions from electric utility combined-cycle gas turbines that are capable of being fired with more than 73 MW (250 million Btu-hour) heat input of fossil fuel in the steam generator, and where the unit is constructed for the purpose of selling more than one-third of its electrical output capacity to the general public. Electric utility combined-cycle gas turbines that use only turbine exhaust gas to heat a steam generator (waste heat boiler) or that are not capable of being fired with more than 73 MW of fossil fuel in the steam generator would not be covered by the proposed standards.

ISSUES ON APPLICABILITY

Noncontinental areas. There are several island areas that would be affected by the proposed standards. Because ot the unique characteristics of these areas, it is expected that all of their future power plants will use oil rather than coal. The issue is whether these new oil-fired units should be subject to the proposed 85 percent reduction, which would effectively require the use of FGD or equivalent systems, or to allow the use of low sulfur oil. After considering the costs of requiring FGD systems in light of the limited land area available for sludge disposal, EPA has decided to propose an exeption for these facilities from the 85 percent reduction requirement. They would have to comply with the proposed SO_2 limit for oil-fired facilities of 340 ng/J (0.80 lb/million Btu) as well as all other proposed standards (see section 4.4 of EPA 450/2-78-007a-1).

Anthracite coal and Alaskan coal. The proposed standards would cover facilities combusting low sulfur anthracite coal or Alaskan coal in the same manner as all other coals.

EPA realizes, however, there are arguments in favor of allowing less stringent standards because of unique factors for both coals.

With respect to Alaskan coal, it is argued that the unique climatic conditions in Alaska coupled with the very low sulfur content of the coal makes it unreasonable to apply the same percent reduction requirement for SO_2 emissions to power plants located in that State. Anthracite is also low in sulfur content, but it is more expensive to produce than other locally available coals. In view of this, proponents of anthracite argue that if control cost were reduced through a less stringent standard, anthracite could then compete with locally available high sulfur content bituminous coal (see section 4.7.2 of EPA 450/2-78-007a-1).

Emerging technologies. Various groups expressed concern that if the proposed standards were rigidly applied, the development of new and promising technologies might be discouraged. They suggested that the innovative technology waiver provisions under the Clean Air Act Amendments of 1977 are not adequate to encourage certain capital-intensive, front-end

control technologies. Under the innovative technology waiver provisions (section 111(j) of the Act) the Administrator may grant waivers for a period of up to 7 years from the date of issuance of the waiver or up to 4 years from the start of operation of a facility, whichever is less. Although this amount of time may be sufficient to amortize the cost of tail-gas control devices that do not achieve their design control level, it does not appear to be sufficient for amortization of high-capital-cost, front-end control technologies. For most front-end control technologies, modification or retrofit may be economically unreasonable.

To mitigate the potential impact on emerging front-end technologies, EPA proposes to establish slightly less stringent requirements for initial full-scale demonstration plants. This should insure that these standards do not preclude the development of new front-end technologies and should compensate for problems that may arise when applying them to commercial-scale facilities. The 85 percent SO_2 control requirement and the 210-ng/J NO_x standard will provide developers of new technologies a clear environmental control objective for commercial facilities. However, if the Administrator subsequently finds that a given emerging technology (taking into consideration all areas of environmental impact, including air, water, solid waste, toxics, and land use) offers superior overall environmental performance, alternative standards would then be established by the Administrator.

Under the proposal, the Administrator (in consultation with the Department of Energy) would issue commercial demonstration permits for the first three full scale demonstration facilities of each of the technologies listed in the following table. These technologies have been shown to have the potential to achieve the standards established for commercial facilities. Under such permits, an 80 percent SO_2 control level (24-hour average) or a 300 ng/J (0.70 lb/million Btu) NO_x emission limitation for liquid fuel derived from bituminous coals would be established. If the Administrator (in consultation with the Department of Energy) finds that additional demonstration of a given technology is necessary, additional permits may be issued. No more than 15,000 MW equivalent electrical capacity would be allocated for the purpose of commercial demonstrations under this proposal. This capacity would be allocated as follows:

Technology	Pollutant Equivalent	MW electrical capacity
Solvent-refined coal	SO_2	6,000-10,000
Fluidized bed combustion (atmospheric).	SO_2	400-3,000
Fluidized bed combustion (pressurized).	SO_2	200-1,200
Coal liquefaction	NO_x	750-10,000

The capacity is presented in ranges because of uncertainty as to the amount that will be required for any one technology. This use of ranges should not be construed to mean that more than 15,000 MW would be allocated for purposes of commercial demonstration permits.

It should be noted that these permits would only apply to the application of this standard and would not supercede the new source review procedures and prevention of significant deterioration requirements under section 110 of the Act.

Finally, concern has been expressed as to whether emerging technologies should be required to comply with the proposed particulate standard. Since this concern is based on the same arguments that have been offered in regard to conventional technologies, consideration of special provisions will be tied to the final decision on the particulate emission limitation.

Modifications. The question has been raised whether the use of shale oil coal-based fuels such as coal/oil mixtures or solvent-refined coal in a boiler originally designed for oil firing is considered a modification under 40 CFR 60.14(c). In response, EPA proposes that shifting an existing oil-fired steam generator to coal/oil mixtures, shale oil, or coal-derived fuels, would not be considered a modification and the facility would not be subject to the proposed standards.

SO_2 STANDARDS

General Requirements. The proposed standards for SO_2 emissions would require:

1. Reduction of potential SO_2 emissions for solid, liquid, and gaseous fuels by 85 percent (24-hour average control efficiency) except for 3 days per month when no less than 75 percent is allowed.

2. Maximum allowable emissions from solid fuel of 520 ng/J (1.2 lb/million Btu) heat input 24-hour average except for the 3 days per month when the 75 percent is allowed.

3. Maximum allowable emissions from liquid or gaseous fuels of 340 ng/J (0.80 lb/million Btu) heat input 24-hour average except for 3 days per month.

4. Maximum control level of 86 ng/J (0.20 lb/million Btu) heat input 24-hour average.

DISCUSSION

The proposed standards are based on emission levels and the percentage reduction achievable with a well designed, operated, and maintained flue gas desulfurization (FGD) system. EPA believes the following types of FGD systems are capable of achieving the proposed standards: lime, limestone, Wellman-Lord, magnesium oxide, and double alkali. In determining that FGD is the best system of continuous emission reduction that has been adequately demonstrated for removal of SO_2, EPA assessed the costs of achieving the proposed standards and the nonair quality health and environmental impacts and energy requirements. Although the proposed standards are based on the performance of FGD systems, the use of other systems should not be discouraged. In this regard, a number of emerging technologies show promise.

The proposed percentage reduction requirement would apply to the combustion of all fossil fuels unless the emission level of 86 ng/J (0.20 lb/million Btu) is constantly attained (24-hour average basis). In effect, this means that all coal-fired and residual-oil-fired plants would be required to install FGD or equivalent SO_2 emission control systems. On the other hand, the emission level of 86 ng/J would permit certain clean fuels, such as wood waste, to be burned without FGD or at a very low percentage of reduction.

The emission limitations of 520 ng/J (1.2 lb/million Btu) for solid fuels and 340 ng/J (0.80 lb/million Btu) for liquid and gaseous fuels would place a maximum limit on SO_2 emissions regardless of percentage of SO_2 reduction attained and thus restrict the amount of sulfur in the fuel fired.

In determining that FGD systems were adequately demonstrated and that they could attain the proposed limitations, EPA has conducted a number of studies either directly or through consultants. To evaluate the relative performance of FGD systems, EPA has conducted tests at various sites. Several absorber designs and absorbents were tested at the Shawnee 10-MW test facility, emission tests were performed at various full-scale operations, and performance results from other test facilities and scrubber installations were surveyed, both in the United States and Japan. A detailed summary of the results from these studies is provided in section 4.2 of the supplement to the Background Information document for SO_2 (EPA 450/2-78-007a-1). In addition, all of the study reports are available in the

docket for review (see listing set forth later in this preamble).

PERCENTAGE REDUCTION REQUIREMENT

In establishing the percentage reduction requirement for potential SO_2 emissions for solid, liquid, and gaseous fuels, EPA considered the SO_2 removal efficiency of prototype, pilot-scale, and commercial-scale FGD systems. EPA's considerations included measured variability of percentage reduction, effects of scrubber and coal sulfur variability on performance, effects of a spare module on scrubber reliability, and effects of design changes and maintenance practices on scrubber reliability.

To establish the variation of FGD system removal efficiency and the effects of varying sulfur content of coal on measured 24-hour-average SO_2 removals, EPA obtained continuous monitoring data from the Cane Run and Bruce Mansfield powerplants. These data were analyzed to establish the geometric standard deviations. Based on these analyses, EPA projected the mean SO_2 removal needed to comply with the proposed percentage reduction requirement. At the 99.99 percent confidence level, EPA concluded that an FGD system that could achieve a 92 percent long-term (30 days or more) mean SO_2 removal would comply with the proposed 85 percent (24-hour average) requirement.

With respect to long-term SO_2 removal efficiency, EPA has concluded that with certain practical changes in design, operation, and maintenance practices, lime/limestone FGD systems can achieve long-term SO_2 removal of 92 percent. FGD technologies employing more reactive absorbents such as magnesium oxide, additive magnesium-oxide-enriched lime, and sodium-based liquors can achieve SO_2 removal levesls of greater than 92 percent. For a more detailed discussion of these findings, please refer to section 4.2 of EPA 450/2-78-007a-1.

FGD AVAILABILITY

With respect to conditions that may affect FGD availability, EPA has investigated such problems as:

1. Formation of scale in the absorber and associated equipment in lime and limestone systems leading to plugging and reduced capacity.
2. Plugging of mist eliminators, lines, and some types of absorbers.
3. Failure of ancillary equipment such as pumps, piping, pH-sensing equipment, reheaters, centrifuges, fans, and duct and stack linings.
4. Inadequate absorbent make-up preparation.

EPA has concluded that these problems can and have been solved through the improved design of components, proper selection of construction materials, appropriate sparing, good operating practices, and good maintenance. As a result, the availability of full-scale scrubbing facilities has increased steadily. (See EPA 600/7-78-032b.) When determining FGD availability, one must recognize that FGD systems are composed of FGD modules, each of which is a separate scrubbing system. Because FGD modules are not generally manufactured in sizes over 125-MW capacity, large powerplants use multiple FGD modules in parallel. When FGD modules, even those averaging 90 percent availability, are integrated into an FGD system, the probability that all modules in the system will be simultaneously available diminishes in proportion to the number of modules; therfore, spare FGD modules will be needed in most instances. Such spares were included in EPA's estimates of FGD costs. Even when high FGD module availabilities are attained, the FGD module will not be in service some of the time because of regularly scheduled maintenance operations or repairs needed to restore loss of scrubbing efficiency. Although the amount of time for such maintenance can be considerable (even continuous), there should be little adverse impact on plant operation. With spares, a module can be rotated out of operation for maintenance even at full electrical load conditions. Several plants now in operation employ such a system. At reduced electrical loads, all FGD modules will not be needed for SO_2 control. Periodically, the entire plant is taken out of service for servicing non-FGD system related components providing an opportunity for scheduled FGD maintenance.

EPA acknowledges that even with a good maintenance program and use of spare FGD modules it may not be possible to maintain complete FGD system control for a portion of a plant's operating hours. At these times, the proposed standards would require that the electric generating load be shifted to an alternative electric generating plant. This procedure is necessary to prevent bypassing of uncontrolled SO_2 emissions to the atmosphere.

Load shifting is normally feasible, but it will not be possible when emergency conditions exist. Emergency conditions are considered to be periods when a powerplant and other electrical generating equipment owned by the associated utility company are being operated at full operating capacity less the capacity equal to the largest single unit in the system. Under emergency conditions, the proposed standards would allow flue gas to be bypassed around an inoperable FGD module provided the facility is equipped with at least one spare module. The proposed standards would not require plants having capacity of less than 125 MW to have a spare module. Bypassing an FGD unit except under emergency conditions would be a violation of the standards.

The emergency condition provisions are necessary to maintain the electric utility's capability to meet electric demand when excess generating reserves are not available. A minimal amount of spinning reserves must be kept separate from the load shifting procedures to prevent "blackouts." Please refer to section 4.6 of EPA 450/2-78-007a-1 for a more detailed discussion of this matter.

ENVIRONMENTAL IMPACTS

A major consideration with respect to nonregenerable FGD systems is the disposal of sludge and contamination from wastewater; therefore, EPA had its consultants examine these potential problems in detail.

With respect to sludge disposal, the consultant examined a number of parameters including the quantification of solid wastes that would be generated by different regulatory options, plant sizes, coal sulfur contents, and scrubbing processes. In addition, untreated wastes were characterized by effects of scrubbing process variables on sludge chemistry, trace element content, and physical and chemical properties. Finally, the environmental impacts and costs of various disposal processes and practices were assessed. ("Controlling SO_2 Emissions from Coal-Fired Steam Electric Generators: Solid Waste Impact," EPA 600/7-78-044.)

From a companion analysis ("Review of New Source Standards for SO_2 Emissions from Coal-Fired Utility Boilers," vol. 1, sec. 3), it is estimated that under the 85-percent reduction requirement the quantity of sludge generated will increase from some 12 million metric tons dry basis (current standard) to some 55 million metric tons dry basis in 1995. These figures are conservative since they assume a high-growth rate in electrical demand (5.8 percent through 1985, and 5.5 percent thereafter). The quantity of sludge generated would be less under regulatory options that do not require a uniform application of the 85-percent reduction requirement.

To estimate the cost of sludge disposal, EPA assumed that dewatered sludge would be fixed with lime and fly ash and be impounded in a clay-lined pond. Based on this assumption, EPA estimates that the cost of disposal would be some $19 per dry metric ton including land costs.

In addition, a field disposal study, which has been underway for 3 years at TVA's Shawnee powerplant site,

has not revealed any significant problems from impoundment of treated FGD wastes.

EPA has concluded from these studies that sludge can be disposed of in an environmentally sound manner at reasonable costs. EPA will continue to evaluate the costs and effectiveness of alternative disposal methods as part of the economic analyses to be conducted during the proposal period. Comments on alternative control methods are invited.

With respect to the potential water pollution impact, EPA's consultant examined alternative standards in terms of their effects on the quality and quantity of powerplant waste-water effluents, and the amount of water consumption. In addition, alternative SO_2 control systems were examined relative to their impact on the above. The potential environmental effects of SO_2 control on effluents were also examined, and alternative treatment processes were evaluated.

The water pollution impact report "Controlling SO_2 Emissions from Coal-Fired Steam Electric Generators: Water Pollution Impact," EPA 600/7-78-045, concluded that in the aggregate the volume and quality of waste streams from SO_2 control systems are affected very little by alternative standards and that all effluent streams can be treated to acceptable levels using proven, commercially available technologies. Similarly, a more stringent standard would have little effect on water demand when compared to total plant consumptive water use.

ALTERNATIVE TECHNOLOGY

A potential alternative to wet FGD systems is dry SO_2 scrubbing. One of the more effective designs incorporates the use of a spray dryer and baghouse. In this system a spray dryer (similar to a wet SO_2 scrubber) is used with lime, soda ash, or other reactants to scrub SO_2 from the flue gases. Because of the minimal use of water in the spray dryer (by design), no additional reheating is required. Following the spray dryer, a baghouse is used to collect all particulate matter (including SO_2 reactants).

Spray drying has been tested at pilot plants, and it may be capable of achieving 85 percent removal with lime, soda ash, and other reactants. Due to cost considerations, the system is principally limited to coals with less than 1.5-percent sulfur if lime is used. Full-sized spray-drying units for powerplant application have been ordered and are expected to begin operation in the early 1980's. (Refer to sec. 4.3 of EPA 450/2-78-007a-1.)

In addition, a combination of physical cleaning of the fuel in conjunction with FGD systems may be a viable option for reducing SO_2, depending on the particular characteristics of the coal being used.

MAXIMUM ALLOWABLE EMISSION LIMITATION

In selecting the proposed maximum allowable emission limitation, EPA had to take into consideration two primary factors: FGD performance and the impact of the limitation on high-sulfur coal reserves. In effect, FGD performance determines the maximum sulfur content of coals that can be fired in achieving compliance with the maximum allowable emission limitation. To estimate coal sulfur content which can be used, EPA projected SO_2 emissions based upon minimum FGD system performance (i.e., 75 percent SO_2 removal 3 days per month) and maximum daily average sulfur content. Two alternative maximum allowable emission levels were considered: (a) 520 ng/J with three exemptions per month that would be coincident with the proposed percentage reduction requirement, and (b) 520 ng/J with no exemptions.

An analysis of national and regional coal production in 1990 was performed for each option. There would be no significant differences in total national production with either option. The analysis included use of cleaned, midwestern coal when coal cleaning would be necessary to attain compliance with the limitation. Sufficient reserves would be available to satisfy national demand with either option. However, on a regional basis a limitation without exemptions could have the potential of dislocating some coal production in the Midwest.

Under either option, midwestern coal production would increase to about 300 million tons; however, the use of some coal reserves in this area would be restricted by the limitation without exemptions. In the States of Ohio, Illinois, and in western Kentucky, 60 or more percent of reserves might be restricted even if coal cleaning were used.

On the other hand, this analysis may overstate the potential impacts since coal mixing or other methods of reducing the maximum daily average coal sulfur content were not fully considered. In view of this, the Agency will continue to examine the need for exemptions and the appropriateness of more stringent maximum emission levels such as 410 ng/J (1.0 lb/million Btu) or 340 ng/J (0.80 lb/million Btu) during the comment period. (See section 4.7.1 of EPA 450/2-78-007a-1 for a more detailed discussion.)

Based on our present estimates of the potential impact upon midwestern coal reserves and production, EPA has proposed that the maximum allowable emission limitation should have a 3-day exemption coincident with the 3 days of 75-percent control in the percent reduction standard. However, the Agency specifically requests comments on the level of the emission limit and the appropriateness of the 3-day exemption.

MAXIMUM CONTROL LEVEL

Under the proposed SO_2 standard, a maximum control level would be established. Compliance with that control level would constitute compliance with the percentage reduction requirement. In developing the proposed standard, EPA has considered two alternatives. The first would establish the level of 86 ng/J (0.20 lb/million Btu). The second would establish a higher level. Values from 215 ng/J (0.50 lb/million Btu) to 340 ng/J (0.80 lb/million Btu) have been considered.

In essence, these options focus on the question of whether a powerplant burning low-sulfur coal should be required to achieve the same percentage reduction as those burning high-sulfur coal. The emission level of 86 ng/J would require virtually all coal-fired plants to reduce potential emissions by 85 percent. In addition, it would require the installation of FGD systems on oil-fired powerplants. Therefore, this option is commonly referred to as full scrubbing or full control. On the other hand, an emission level in the range of 215-340 ng/J would permit plants firing low-sulfur coal to reduce their emissions by less than 85 percent, hence the term partial scrubbing.

Proponents of partial scrubbing have argued that adoption of a limitation in the range of 215-340 ng/J would reduce scrubber costs and permit bypassing of a portion of the flue gas and thus alleviate the need for plume reheat and associated energy costs. since low-sulfur coal inherently emits less SO_2, proponents of partial scrubbing maintain that these benefits can be obtained by partial scrubbing without a significant increase in emissions nationally. Finally, it is argued that since coal-fired units would be cheaper to build and operate if partial scrubbing were allowed, less dependence would be placed on existing oil-fired units and turbines, and a significant saving of oil would be realized.

On the other hand, proponents of full control have maintained that plants firing low-sulfur coal should be subject to the same reduction requirement as those burning high-sulfur coal. They argue that the statutory requirements and legislative history of section 111 of the Clean Air Act Amendments of 1977 require a uniform percentage reduction requirement. They also point out that applying full scrubbing to low-sulfur coal is technologically less demanding and

less expensive than applying full scrubbing to high-sulfur coal and that emissions from a plant burning low-sulfur coal would be up to four times greater under partial scrubbing than under full control. Finally, it is argued that adoption of full control will tend to promote the use of locally available, higher sulfur content coals, particularly in the Midwest.

ALTERNATIVE SO_2 STANDARDS

The following alternative standards for SO_2 have been suggested by DOE:

1. Eighty-five percent reduction of potential SO_2 emissions during each calendar month.

2. A maximum control level of 340 ng/J (0.80 lb SO_2/million Btu), not to be exceeded during any 24-hour period.

3. A minimum of 33-percent reduction of potential SO_2 emissions. The alternative standards would have the following operational characteristics:

Monthly averaging. There would be no daily restriction on the percent reduction in potential SO_2 emissions. The requirement would be that the total sulfur emissions summed over each calendar month be no more than 15 percent of the total sulfur content of the coal consumed. There would be no restriction on bypassing some or all of the flue gas, so long as the monthly percent reduction requirement is met. If the monthly requirement is not met, enforcement penalties would be applied on the basis of the number of individual 24-hour periods during which the percent reduction was less than 85 percent.

Maximum control level of 340 ng/J (0.80 lb SO_2/million Btu). Under this alternative, a sliding-scale-percent reduction would be required; the full 85-percent reduction would be required only when high-sulfur coals were used. Only the minimum percent reduction requirement would be enforced for 24-hour periods when SO_2 emissions would be 340 ng/J or less. Any 24-hour period when emissions are greater than 340 ng/J and reduction is less than 85 percent will be a violation of the percent reduction requirement. There would be no waivers or exemption for this daily requirement.

Minimum percent reduction requirement of 33 percent. Regardless of whether the resulting emissions would be lower than the 340 ng/J (0.80 lb/million Btu) emissions requirement, 33-percent reduction in potential SO_2 emissions would be required. This would assure that continuous emissions reduction technology is applied to all coals, including those with the lowest naturally occurring sulfur content.

In addition to the DOE proposal, the utility industry, through the Utility Air Regulatory Group (UARG), has also suggested an alternative SO_2 standard. The industry proposal contemplates a sliding scale percentage production standard for sulfur-dioxide emissions under which the required percent reduction declines as sulfur content in the coal declines. Under the industry proposal, there would be a ceiling of 1.2 pounds of sulfur dioxide and the required percent reduction would range between 85-percent removal on a coal with uncontrolled emissions[1] of 8 pounds to 20-percent removal on coals with uncontrolled emissions of 1 pound or less. Specifically, for coals with uncontrolled emissions of 5.0 pounds of sulfur dioxide or greater, the constraining emissions limit would be 1.2 pounds of sulfur dioxide. For coals with uncontrolled sulfur-dioxide emissions of 5 pounds of sulfur dioxide, percent removal would be 76 percent and, in the range between 5 pounds and 4 pounds of uncontrolled emissions, percent removal would decline by 0.1 percentage point for each 0.1-pound decrease in uncontrolled emissions. For coals with uncontrolled emissions of 4 pounds of sulfur dioxide, percent removal would be 75 percent and, between 4 pounds and 3 pounds of uncontrolled emissions, percent removal would decline by 0.9 percentage point for each 0.1 pound decrease in uncontrolled emissions. For coals with 3 pounds of uncontrolled emissions, percent removal would be 66 percent, and between 3 pounds of sulfur dioxide and 2 pounds of sulfur dioxide, percent removal would decline by 1.3 percentage points for each 0.1-pound decrease in uncontrolled emissions. At 2 pounds of uncontrolled emissions percent removal would be 53 percent, and between 2 pounds and 1 pound of uncontrolled emissions, percent removal would decline by 3.3 percentage points for each 0.1 pound decline in uncontrolled emissions. For coals with 1 pound or less of uncontrolled emissions percent removal would be 20 percent.

Compliance with these sulfur-dioxide standards would be determined on a 30-day average. Industry has also recommended that consideration be given to establishing an emission ceiling of 1.5 pounds for coal with uncontrolled emissions over 8 pounds.

Comments on these alternative standards are invited.

ANALYSES OF ALTERNATIVES

In order to determine the appropriate form and level of control for the proposed standards, EPA has performed extensive analyses of the potential national impacts associated with the alternative standards. The Agency employed economic models to forecast the structure and operating characteristics of the utility industry in future years. These models project the environmental, economic, and energy impacts of alternative standards for the electric utility industry. The major analytical efforts were a preliminary analysis completed in April 1978 and a revised assessment completed in August 1978. While these analyses are preliminary and subject to change, the issues examined and the results obtained are summarized in this section and in the following tables. Further details of the analyses can be found in "Background Information for Proposed SO_2 Emission Standards-Supplement," EPA 450/2-78-007a-1.

Impacts analyzed. The environmental impacts of the alternative standards were examined by projecting pollutant emissions. The emissions were estimated nationally and by geographic region for each plant type, fuel type, and age category. The Agency is also evaluating the significance of waste products generated by the control technologies and their environmental impacts.

The economic and financial effects of the alternatives were examined. This assessment included an estimation of the utility capital expenditures for new plant and pollution control equipment as well as the fuel costs and operating and maintenance expenses associated with the plant and equipment. These costs were examined in terms of annualized costs and annual revenue requirements. The impact on consumers was determined by analyzing the effect of the alternatives on average consumer costs and average monthly residential bills. The alternatives were also examined in terms of cost per ton of SO_2 removal. Finally, the present value costs of the alternatives were calculated.

The effects of the alternative proposals on energy production and consumption were also analyzed. National coal use was projected and broken down in terms of production by geographic region and consumption by region. The amount of western coal shipped to the Midwest and East was also estimated. In addition, utility consumption of oil and gas was analyzed.

Major assumptions. Two types of assumptions have an important effect on the results of the analyses. The first group involves the model structure and characteristics. The second group includes the assumptions used to specify future economic conditions.

[1] Uncontrolled emissions of sulfur dioxide are defined as twice the sulfur content of the coal measured in pounds per million Btu. For the purposes of this standard, sulfur content of the coal can be measured at the plant for unwashed coals and at the mine prior to washing, for washed coals. In calculating percent removal, sulfur content of the flue gas as it leaves the stack is compared with the uncontrolled emissions of the coal.

The utility model selected for this analysis can be characterized as a cost minimizing economic model. In meeting demand, it determines the most economic mix of plant capacity and electric generation for the utility system, based on a consideration of construction and operating costs for new plants and variable costs for existing plants. It also determines the optimum operating level for new and existing plants. This economic-based decision criteria should be kept in mind when analyzing the model results. These criteria imply, for example, that all utilities base decisions on lowest costs and that neutral risk is associated with alternative choices.

Such assumptions may not represent the utility decisionmaking process in all cases. For example, the model assumes that a utility bases supply decisions on the cost of constructing and operating new capacity versus the cost of operating existing capacity. Environmentally, this implies a tradeoff between emissions from new and old sources. The cost minimization assumption implies that in meeting the standard a new powerplant will fully scrub high-sulfur coal if this option is cheaper than fully or partially scrubbing low-sulfur coal. Often the model will have to make such a decision, especially in the midwest where utilities can choose between burning local high or imported western low-sulfur coal. The assumption of risk neutrality implies that a utility will always choose the low-cost option. Utilities, however, may perceive full scrubbing as involving more risks and pay a premium to be able to partially scrub the coal. On the other hand, they may perceive risks associated with long-range transportation of coal, and thus opt for full control even though partial control is less costly. Comments are solicited regarding the use of a cost optimization model to simulate utility decisions.

The assumptions used in the analyses to represent economic conditions in a given year have a significant impact on the final results reached. The major assumptions used in the EPA analyses are shown in table 1 and the significance of these parameters is summarized below. Comments are solicited regarding the assumptions used.

The growth rate in demand for electric power is very important since this rate determines the amount of new capacity which will be needed and thus directly affects the emission estimates and the projections of pollution control costs. A high electric demand growth rate results in a larger emission reduction associated with the proposed standards and also results in higher costs. The April analysis used a relatively high-growth rate consistent with last year's national energy policy studies. The August analysis used a lower growth projection which is more in line with current estimates of demand growth.

The nuclear capacity assumed to be installed in a given year is also important to the analysis. Because nuclear power is less expensive, the model will predict construction of new nuclear plants rather than new coal plants. Hence, the nuclear capacity assumption affects the amount of new coal capacity which will be required to meet a given electric demand level. In practice, there are a number of constraints which limit the amount of nuclear capacity which can be constructed. The assumptions used in the EPA analyses assume high (April) and moderate (August) growth in nuclear capacity.

The oil price assumption has a major impact on the amount of predicted new coal capacity, emissions, and oil consumption. Since the model makes generation decisions based on cost, a low oil price relative to the cost of building and operating a new coal plant will result in more oil-fired generation and less coal utilization. This results in less new coal capacity which reduces capital costs but increases oil consumption and fuel costs because oil is more expensive per Btu than coal. This shift in capacity utilization also affects emissions, since an existing oil plant generally has a higher emission rate than a new coal plant even when only partial control is allowed on the new plant.

Coal transportation and mine labor rates both affect the delivered price of coal. The assumed transportation rate is generally more important to the predicted consumption of low-sulfur coal since that is the coal type which is most often shipped long distances. The assumed mining labor cost is more important to eastern coal costs and production estimates since this coal production is generally much more labor intensive than western coal. The model does not incorporate the Agency's PSD regulations or forthcoming requirements to protect and enhance visibility. These requirements may be important factors for new powerplants.

Summary of results. The results of the EPA analyses which were completed in April and August 1978 are presented in tables 2 through 8 and discussed below. Four alternative standards were evaluated. Each of the options presented includes 85-percent control of inlet SO_2 (24-hour average), except for 3 days per month, a maximum SO_2 emission limit of 520 ng/J (1.2 lb/million Btu) except for 3 days per month, a particulate matter standard of 13 ng/J (0.03 lb/million Btu), and the proposed NO_x standards. The partial control options in the tables represent alternative levels for the maximum control level required on a 24-hour basis.

The projected SO_2 emissions from utility boilers are shown by plant type and geographic region in tables 2 through 5. Table 2 details the 1990 national SO_2 emissions resulting from different plant types and age groups. As is expected, the proposed standards result in a significant reduction of SO_2 emissions as compared to the current standards. This reduction ranges from 10 to 12 percent depending on the alternative examined and the assumptions used. The emissions from new plants directly affected by the standards are reduced by up to 73 percent. However, the model predicts that the proposed standards will delay the construction of new plants (note the total coal capacity changes) causing existing coal- and oil-fired plants to be utilized more than they would have been without the proposed standards. This causes an increase in emissions from existing plants which offsets part of the reduction achieved by new plants. As discussed above, this shift in capacity utilized is predicted by the costs minimiization model as a result of increased pollution control cost for new coal-fired plants. This shift in the generation mix has important implications for the decisionmaking process. For example, if a national energy policy phases out oil use for electric power generation, then the April study's prediction (table 6) of increased oil use in 1990 (over 1975 levels) will not be allowed to occur. With such a policy, oil consumption impacts would be similar to those shown for the August analysis in table 6.

A summary of the projected 1990 regional SO_2 emissions under the alternative control levels is shown in table 3. The combined emissions in the East and Midwest are reduced about 7 percent as compared to predictions under the current standards. These emissions are not affected greatly by the various control options, although there is a slight increase shown under the 340 ng/J (0.80 lb/million Btu) option in the April analysis. The combined emissions in the west south-central and west regions show a greater variation on a percentage basis. In the analysis, the full control and 210 ng/J (0.50 lb/million Btu) options both result in a 36-percent reduction from emission levels under the current standards, while the 340 ng/J (0.80 lb/million Btu) option results in a 28-percent decrease.

Regional emissions from the new plants directly affected by the proposed standards are shown for the years 1990 and 1995 in tables 4 and 5. These tables also project the coal consumption and emission factors (million tons of SO_2 per quadrillion Btu) for

the new plants. The latter figures are shown to illustrate the effect of changes in the amount of new capacity and variations in the utilization of the new capacity. As noted above, the 1990 emissions from new plants drop dramatically under the proposed standards to a level only about one-third that which would result under the current standards. This emission reduction is due in part to lower emission factors and in part to reduced coal consumption predicted by the model. Coal consumption in the East is virtually unchanged, but in the Midwest coal consumption in new plants drops by one-third as a result of the proposed standards. In the west south-central and west regions coal consumption drops 5 to 10 percent which is about the same as the decline in national coal consumption at new plants. The reduced coal consumption in new plants results from a delay in new plant construction due to the increased cost of generation from new coal plants. Reduced coal consumption by new plants means a shift to more coal and oil burned in existing plants or new turbines, and this causes the increase in emissions from existing and oil-fired plants which was mentioned earlier. Table 5 shows that in 1995 the emission reduction due to the proposed standards is still of the same magnitude as the 1990 reduction. Also, since coal capacity is similar under all options by 1995, the coal consumption impact of the proposed standards is less pronounced. Changes in coal consumption in 1995 are almost entirely due to variations in the utilization of the new plants.

Table 6 illustrates the effect of the proposed standards on 1990 national coal production, western coal shipped east, and utility oil and gas consumption. This table shows some large differences between the two analyses which are caused by different model assumptions. For example, in the model, higher oil prices decrease oil demand and increase coal use. Increasing transportation costs increases the delivered price of western coal and reduces demand. These two factors along with the lower growth rate account for most of the difference in fuel use estimates between the April and August results. However, the conclusions drawn from the analyses are similar. For example, in terms of coal production, both analyses show that total production will increase in all regions of the country as compared to 1975 levels.

Compared to production under the current standards, the April analysis predicts an increase in eastern coal production under all but the 340 ng/J (0.80 lb/million Btu) option. Midwestern production increases under all options, and western production decreases under all but the 340 ng/J (0.80 lb/million Btu) option. Western coal shipped east is lower under all options than under the current standard, but is still 14 to 20 times higher than 1975 levels. Finally, the April analysis projects that oil consumption by utilities would be increased by the proposed standards. The increase varies from 300,000 barrels per day for the full control option to 100,000 barrels per day for the 210 ng/J (0.50 lb/million Btu) and 340 ng/J (0.80 lb/million Btu) options.

The August figures predict a smaller increase in 1990 eastern coal production than would be expected under the current standards. Midwestern production increases by 15 to 43 million tons and western production decreases up to 56 million tons. The amount of western coal shipped east is reduced by 30 million tons by both full control and 210 ng/J (0.50 lb/million Btu) options, and is essentially unchanged by the higher options. Due to the high assumed oil price, oil consumption is reduced from current levels, but the 1990 difference between the options and the current standards is still an increase of 200,000 to 300,000 barrels per day. This increased oil consumption results from the predicted shift toward existing oil-fired plants and turbines as a result of higher pollution control costs for new coal plants. Table 8 shows that as high oil prices are assumed (August analysis), there is no difference in 1995 oil consumption among the options. Finally, the DOI/DOE coal leasing study (see "Other Studies") shows a difference of about 50,000 barrels per day in 1990 between full and partial scrubbing.

The economic effects of the proposed standards are shown in table 7 for 1990. Utility capital expenditures between 1979 and 1990 increase under all options as compared to the $500 to $750 billion estimated to be required in the absence of a change in the standard. The capital estimates in tables 7 and 8 are increments over the expenditures under the current standard and include both plant capital (for new capacity) and pollution control expenditures. As shown in table 2, the model estimates total industry capacity is to be 10 GW to 15 GW greater under the partial control option, and the cost of this extra capacity makes the total utility capital expenditures higher under the 210 ng/J (0.50 lb/million Btu) and 340 ng/J (0.80 lb/million Btu) options, even though pollution control capital is lower than under the full control option.

Annualized cost includes a levelized capital charge, fuel costs, and operation and maintenance costs associated with utility equipment. All of the options cause an increase in annualized cost over the current standards. This increase varies, depending on the assumptions modeled, from $300 million to $2 billion or a 1- to 2-percent increase over the $90 to $100 billion.

The average monthly residential electric bill is predicted to increase only slightly by any of the options, up to a maximum 2-percent increase shown for full control in the April analysis. The large total increase in the monthly bill over 1975 levels is due in large part to a more than 50-percent increase in the amount of electricity used by each customer. Pollution control expenditures, including those to meet the current standards, account for about 15 percent of the increase in the average monthly bill while the remainder of the cost increase is due to capacity expansion and general cost escalations.

The average monthly bill is determined by estimating utility revenue requirements which are a function of capital expenditures, fuel costs, and operation and maintenance costs. Therefore, due to changes in the pattern of expenditures, the selection of the specific year examined has an impact on the costs shown. For example, the August analysis shows slightly higher cost in 1990 for the partial control options as compared to full control. This is due to the larger amount of new capacity and the higher associated capital costs under these options. By 1995, the amount of new coal capacity under each option has approximately equalized, and the estimates show full control to be most expensive but by only 12 cents a month over the average bill under the 340 ng/J (0.80 lb/million Btu) option (table 8).

The incremental costs per ton of SO_2 removal are also shown in table 7. The figures are determined by dividing the change in annualized cost by the change in annual emissions, as compared to the current standards. These ratios are a measure of the cost effectiveness of the options, where lower ratios represent a more efficient resource allocation. All the options result in higher cost per ton than the current standards with the full control option being the most expensive.

Another measure of cost effectiveness is the average dollar-per-ton cost at the plant level. This figure compares total pollution control cost with total SO_2 emission reduction for a model plant. This average removal cost varies depending on the level of control and the coal sulfur content. The range for full control is from $260 per ton on high-sulfur coal to $1,600 per ton on low-sulfur coal. The partial scrubbing range is from $900 per ton on low-sulfur coal to $2,000 per ton on very low sulfur coal.

The economic analysis also estimated the present value cost in order to facilitate comparison of the options by

reducing the streams of capital, fuel, and operation and maintenance expenses to one number. A present value estimate allows expenditures occurring at different times to be evaluated on a similar basis by discounting the expenditures back to a fixed year. Two types of present value costs have been estimated in the analysis.

First, an estimate was made of the present value of costs which will be faced by the consumers. Essentially, this represents the present value of utility revenue requirements. This calculation for the August results shows a 1990 present value of $26 billion for the full control option and $15 billion for the 340 ng/J (0.80 lb/million Btu) option as compared to the current standards.

Second, an "economic" or "real resource" present value was estimated. Real resource present value is designed to measure the level of national resources committed to the standards. In computing this resource commitment, construction costs, labor costs, and other resource costs were considered, but financing flows and transfer payments were excluded. Thus, allowance for funds during construction, depreciation, interest, taxes, and other indirect flows were excluded. This second type of present value figure gives an estimate of the costs to society of the options. The calculation of this value based on the August analysis results in a 1990 present value of $9.8 billion for full control and $10.4 billion for the 340 ng/J (0.80 lb/million Btu) option. Both types of present value costs were estimated as an increment over the current standards for the years 1990 and 1995. These figures include capital costs of plants installed through that date and operation and maintenance costs for 30 years after the cutoff date. Comments are solicited regarding the calculation and use of present values for this decision. Comments are also solicited on the appropriateness of using present value costs to the utility or present value resources costs to society.

A summary of the 1995 impacts of the proposed standards is shown in table 8 based on the August analysis. The total coal capacity figure shows that by 1995 all the options have equal capacity. Thus, the options reflect differences in amount of low-sulfur coal use, control, equipment, and variation in capacity utilization. In general, full control results in slightly lower emissions, less Western coal shipped East, higher capital expenditures, and slightly higher average residential bills than would result under the partial control options.

Other studies. In addition to the studies described above, EPA is aware of three other major studies of the impacts resulting from several recommended standards for powerplants. One of these studies was performed as a joint effort of the Departments of the Interior and Energy for studying coal leasing policies. Another analysis was done by the Department of Energy, and the third study was sponsored by a segment of the electric utility industry. These studies were performed for the purpose of analyzing the impacts of their respective recommended standards along with the EPA options discussed above. The results of these studies have been considered by EPA in developing the proposed standards. More detail on the results of these studies is given in the supplement to the background document (EPA 450/2-78-007a-1).

Table 1. COMPARISON OF ASSUMPTIONS
April 1978 and August 1978

Assumption	April	August
Growth rates	1975-1985: 5.8%/yr 1985-1995: 5.5%	1975-1985: 4.8%/yr 1985-1995: 4.0%
Nuclear capacity	1985: 108 GW 1990: 177 1995: 302	1985: 97 GW 1990: 167 1995: 230
Oil prices ($ 1975)	1985: $13/bbl 1990: $13 1995: $13	1985: $15/bbl 1990: $20 1995: $28
General inflation rate	5.5%/yr	5.5%/yr
Annual emissions @ 0.5 floor	0.5 lb SO_2/million Btu	0.32 lb SO_2/million Btu
Coal transportation	Increases at general inflation rate	Increases at general inflation rate plus 1%
Coal mining labor costs	Increases at general inflation rate	Increases at general inflation rate plus 1%
Miscellaneous	A number of miscellaneous changes were made between the April 1978 study and the August 1978 study. These changes were either corrections or refinements of values used in the April study. Examples of these changes included revisions to the level of SIP control assumed in the model, revisions to the scrubbing costs, changes in the assumptions regarding industrial coal consumption, and changes to the coal supply curves used in the April study.	

Table 2. SUMMARY OF NATIONAL 1990 SO_2 EMISSIONS FROM UTILITY BOILERS[a]
(million tons)

Plant Category	1975 Actual	Level of Control: Current Standards		Full Control		Partial Control - 210 ng/J		Partial Control 290 ng/J		Partial Control --- 340 ng/J	
		APR	AUG	APR	AUG	APR	AUG	APR	AUG	APR	AUG
SIP/NSPS Plants[b]	—	16.8	16.0	17.2	16.2	16.9	16.2	—	16.1	16.7	16.1
New Plants[c]	—	4.2	4.4	1.5	1.2	2.1	1.3	—	1.5	3.3	1.8
Oil/Gas Plants	—	2.3	1.1	2.5	1.4	2.3	1.2	—	1.2	2.3	1.2
Total National Emissions	18.6	23.3	21.4	21.1	18.9	21.3	18.8	—	18.9	22.3	19.1
Total Coal Capacity (GW)	205	465	451	444	428	460	439	—	440	460	444

SOURCE: Background Information for Proposed SO_2 Emission Standards - Supplement, EPA 450/2-78-007a-1, Chapters 2 and 3, August 1978.

[a]Results of EPA analyses completed in April 1978 and August 1978.

[b]Plants subject to existing state regulations or the current NSPS of 1.2 lb SO_2/million Btu.

[c]Plants subject to the revised standards.

Table 3. SUMMARY OF 1990 REGIONAL SO_2 EMISSIONS FOR UTILITY BOILERS[a]
(million tons)

	1975 Actual	Current Standards		Full Control		Partial Control 210 ng/J		Partial Control 290 ng/J		Partial Control 340 ng/J	
		APR	AUG	APR	AUG	APR	AUG	APR	AUG	APR	AUG
Total National Emissions	18.6	23.3	21.4	21.1	18.9	21.3	18.8	—	18.9	22.3	19.1
Regional Emissions											
East[b]	9.1	10.8	10.2	9.7	9.0	9.6	9.0	—	8.9	10.2	9.0
Midwest[c]	8.8	8.7	7.8	8.5	7.6	8.4	7.6	—	7.6	8.6	7.6
West South Central[d]	0.2	2.6	2.3	1.8	1.5	2.0	1.4	—	1.5	2.3	1.6
West[e]	0.5	1.3	1.3	1.1	0.8	1.2	0.9	—	0.9	1.3	1.0
Total Coal Capacity (GW)	205	465	451	444	428	460	439	—	440	460	444

SOURCE: Background Information for Proposed SO_2 Emission Standards-Supplement, EPA 450/2-78-0071-1, Chapters 2 and 3, August 1978.

[a]Results of EPA analyses completed in April 1978 and August 1978.

[b]New England, Middle Atlantic, South Atlantic, and East South Central Census Regions.

[c]East North Central and West North Central Census Regions.

[d]West South Central Census Region.

[e]Mountain and Pacific Census Regions.

Table 4. SUMMARY OF 1990 SO_2 EMISSIONS BY PLANTS SUBJECT TO THE PROPOSED STANDARDS: AUGUST 1978 ANALYSIS

	Current Standards	Full Control	Partial Control 210 ng/J	Partial Control 290 ng/J	Partial Control 340 ng/J
East[a]					
Total New Plant Emissions (million tons)	2.1	0.7	0.7	0.7	0.8
Coal Consumption (10^{15} Btu)	3.47	3.41	3.43	3.48	3.47
Emission Factor (#S/10^6 Btu)[b]	0.60	0.21	0.21	0.22	0.23
Midwest[c]					
Total New Plant Emissions (million tons)	0.60	0.2	0.2	0.2	0.2
Coal Consumption (10^{15} Btu)	1.17	0.79	0.80	0.81	0.81
Emission Factor (#S/10^6 Btu)[b]	0.48	0.21	0.21	0.23	0.26
West South Central[d]					
Total New Plant Emissions (million tons)	1.2	0.2	0.3	0.4	0.5
Coal Consumption (10^{15} Btu)	1.93	1.67	1.97	1.96	1.95
Emission Factor (#S/10^6/Btu)[b]	0.60	0.14	0.14	0.18	0.24
West[e]					
Total New Plant Emissions (million tons)	0.6	0.1	0.2	0.2	0.3
Coal Consumption (10^{15} Btu)	1.25	1.19	1.18	1.19	1.24
Emission Factor (#S/10^6/Btu)[b]	0.40	0.09	0.14	0.19	0.24

SOURCE: Background Information for Proposed SO_2 Emission Standards - Supplement, EPA 450/2-78-007a-1, Chapter 3, August 1978.

[a]New England, Middle Atlantic, South Atlantic, and East South Central Census Regions.

[b]Ratios may not be obtained exactly from figures shown here due to rounding.

[c]East North Central and West North Central Census Regions.

[d]West South Central Census Region.

[e]Mountain and Pacific Census Regions.

Table 5. SUMMARY OF 1995 SO_2 EMISSIONS BY PLANTS SUBJECT TO THE PROPOSED STANDARDS: AUGUST 1978 ANALYSIS

	Level of Control				
	Current Standards	Full Control	Partial Control 210 ng/J	Partial Control 290 ng/J	Partial Control 340 ng/J
East[a]					
Total New Plant Emissions (million tons)	4.0	1.3	1.3	1.4	1.5
Coal Consumption (10^{15} Btu)[b]	6.73	6.39	6.47	6.49	6.67
Emission Factor (#S/10^6 Btu)[b]	0.60	0.21	0.21	0.21	0.22
Midwest[c]					
Total New Plant Emissions (million tons)	1.2	0.4	0.4	0.5	0.5
Coal Consumption (10^{15} Btu)[b]	2.21	1.94	1.92	1.99	2.00
Emission Factor (#S/10^6 Btu)[b]	0.53	0.21	0.21	0.23	0.26
West South Central[d]					
Total New Plant Emissions (million tons)	1.6	0.4	0.4	0.5	0.7
Coal Consumption (10^{15} Btu)[b]	2.63	2.77	2.73	2.70	2.68
Emission Factor (#S/10^6 Btu)[b]	0.60	0.15	0.15	0.19	0.25
West[e]					
Total New Plant Emissions (million tons)	1.1	0.2	0.3	0.4	0.5
Coal Consumption (10^{15} Btu)[b]	2.28	2.32	2.29	2.27	2.27
Emission Factor (#S/10^6 Btu)[b]	0.44	0.09	0.13	0.19	0.22

SOURCE: Background Information for Proposed SO_2 Emission Standards - Supplement, EPA 450/2-78-007a-1, Chapter 3, August 1978

[a] New England, Middle Atlantic, South Atlantic, and East South Central Census Regions.

[b] Ratios may not be obtained exactly from figures shown here due to rounding.

[c] East North Central and West North Central Census Regions.

[d] West South Central Census Region.

[e] Mountain and Pacific Census Regions.

TABLE 6. SUMMARY OF IMPACTS ON FUELS IN 1990[a]

	Level of Control									
	1975 Actual	Current Standards		Full Control		Partial Control 210 ng/J		Partial Control 290 ng/J		Partial Control 340 ng/J	
		APR	AUG	APR	AUG	APR	AUG	APR	AUG	APR	AUG
U.S. Coal Production (million tons)											
East	396	441	465	467	449	464	450	-	450	418	449
Midwest	151	298	275	375	318	353	316	-	294	307	290
West	100	1027	785	870	736	938	752	-	779	1055	784
TOTAL	647	1767	1525	1711	1502	1755	1517	-	1523	1780	1523
Western coal shipped east (million tons)	21	455	149	299	118	346	117	-	147	429	152
Oil/gas consumption in power plants (million bbl/day)	3.1	3.0	1.2	3.3	1.5	3.1	1.4	-	1.4	3.1	1.4

SOURCE: Background Information for Proposed SO_2 Emission Standards - Supplement, EPA 450/2-78-007a-1, Chapter 2 & 3, August 1978

[a] Results of EPA analyses completed in April 1978 and August 1978.

Table 7. SUMMARY OF 1990 ECONOMIC IMPACTS[a]

	Level of Control									
	Current Standards		Full Control		------Partial Control 210 ng/J			290 ng/J	340 ng/J	
	APR	AUG	APR	AUG	APR	AUG	APR	AUG	APR	AUG
Average monthly residential bills ($/month)	45.31	43.89	46.39	44.22	46.20	44.48	-	44.38	45.47	44.38
Incremental Utility capital expenditures, cumulative 1976-1990 ($ billions)	-	-	10	0	15	8	-	4	3	5
Incremental Annualized cost ($ billions)	-	-	2.0	1.9	1.3	1.7	-	1.3	0.3	1.1
Incremental Cost of SO_2 Reduction ($/ton)	-	-	885	754	640	642	-	511	303	485

SOURCE: Background Information for Proposed SO_2 Emission Standards - Supplement, EPA 450/2-78-007a-1, Chapters 2 & 3, August 1978.

[a]Results of EPA analyses completed in April 1978 and August 1978.

Table 8. SUMMARY OF 1995 IMPACTS: AUGUST 1978 ANALYSIS

	Level of Control					
	1975 Actual	Current Standards	Full Control	------Partial Control 210 ng/J	290 ng/J	340 ng/J
National Emissions (million tons)	18.6	23.3	18.5	18.5	18.7	19.0
New Plant Emissions[a] (million tons)	—	7.9	2.4	2.5	2.8	3.2
U.S. Coal Production (million tons)	647	1865	1865	1858	1868	1866
Western Coal Shipped East (million tons)	21	210	130	133	190	196
Oil/Gas Consumption (million bbl/day)	3.1	0.8	0.9	0.9	0.9	0.9
Incremental Cumulative Capital Expenditures (1975 $ billion)	—	—	32	26	20	19
Incremental Annualized Cost (1975 $ billion)	—	—	2.6	2.3	2.0	1.9
Average Monthly Residential Bill (1975 $/month)	—	45.34	46.22	46.13	46.12	46.10
Total Coal Capacity (GW)	198	587	580	580	580	580

SOURCE: Background Information for Proposed SO_2 Emission Standards-Supplement, EPA 450/2-78-007a-1, Chapter 3, August 1978.

[a]Plants subject to the revised standards.

PARTICULATE MATTER STANDARDS

The proposed standards would limit the emissions of particulate matter to 13 ng/J (0.03 lb/million Btu) heat input and would require a 99-percent reduction in uncontrolled emissions from solid fuels and a 70-percent reduction for liquid fuels. No particulate matter control would be necessary for units firing gaseous fuels alone, and thus a percent reduction would not be required for gaseous fuels. The 20-percent opacity (6-minute average) standard that is currently applicable to steam electric generating units (40 CFR Part 60, Subpart D) would be retained under the proposed standards. An opacity standard is proposed to insure proper operation and maintenance of the particulate matter control system. If an affected facility were to comply with all applicable standards except opacity, the owner or operator may request the Administrator under 40 CFR 60.11(e) to establish a source specific opacity standard for that affected facility.

The proposed standards are based on the performance of a well designed and operated baghouse or electrostatic precipitator (ESP). EPA has determined that these control systems are the best adequately demonstrated systems of continuous emission reduction (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements).

EPA has evaluated data from more than 50 emission test runs conducted at eight baghouse-equipped, coal-fired steam generating units. The data from two tests exceeded the proposed standard, however, it is EPA's judgment that the emission levels at the two units which had measured emission levels above the proposed standards could be reduced to below the proposed standards through an improved maintenance program. EPA believes that baghouses with an air-to-cloth ratio of 0.6 actual cubic meters per minute per square meter (2 ACFM/ft^2) would achieve the proposed standards at pressure drops of less than 1.25 kilopascals (5 in. H_2O). EPA has concluded that this air/cloth ratio and pressure drop are reasonable when considering cost, energy, and nonair quality impacts.

EPA collected emission data from 21 ESP-equipped, coal-fired steam generating units. The nominal sulfur content of the coals being fired ranged from 0.4 percent to 1.9 percent. None of the 21 units tested were designed to achieve an emission level equal to or below the proposed standard of 13 ng/J (0.03 lb/million Btu) heat input; however, emissions from 9 of the 21 units were below the proposed standard. All of the units tested which were firing coal with a sulfur content greater than 1 percent and had a hot side ESP with a specific collection area greater than 89 square meters per actual cubic meter per second (452 ft^2/1,000 ACFM), or a cold side ESP with a specific collection area greater than 85 square meters per actual cubic meter per second (435 ft^2/1,000 ACFM), had emission levels below the proposed standards. EPA evaluated emission levels from units burning relatively low-sulfur coal because it is more difficult for an ESP to collect particulate matter emissions generated by the combustion of low-sulfur coal than high-sulfur coal. ESP's require a larger specific collection area when applied to units buring low-sulfur coal than to units burning high-sulfur coal, because the resistivity of the fly ash is higher with low-sulfur coal. To meet the proposed standard, EPA believes that an ESP used on low-sulfur coal would have to have a specific collection area from around 130 (hot side) to 200 (cold side) square meters per actual cubic meter per second (650 to 1,000 ft^2 per 1,000 ACFM) while an ESP used on high-sulfur coal (3.5 percent sulfur) would only require around 72 square meters per actual cubic meter per second (360 ft^2 per 1,000 ACFM).

ESP's have been traditionally used to control particulate emissions from powerplants. High-sulfur coal produces fly ash with a low electrical resistivity which can be readily collected with an ESP. However, low-sulfur coal produces fly ash with high electrical resistivity, which is more difficult to collect. The problem of high electrical resistivity fly ash can be reduced by using a hot side ESP (ESP located before combustion air preheater) when firing low-sulfur coal. Higher fly ash collection temperatures improve ESP performance by reducing fly ash resistivity for most types of low-sulfur coal (for example, increasing the fly ash collection temperature from 177° C (350° F) to 204° C (400° F) can reduce electrical resistivity of fly ash from low-sulfur coal by approximately 50 percent).

While EPA believes that ESP's can be applied to high-sulfur coal at reasonable costs to meet the proposed standards, it recognizes that applying a large, high efficiency ESP to a facility using low-sulfur coal to meet the proposed standards will be more expensive. In view of this, EPA believes that a baghouse control system could be applied on utility-size facilities firing low-sulfur coal at a lower cost than an ESP. Although the largest baghouse-controlled coal-fired steam generator for which EPA has particulate matter emission data is 44 MW, several larger installations are currently under construction, and EPA plans to test a 350-MW powerplant controlled with a baghouse which recently began operation. Since baghouses are designed and constructed in modules rather than as one larger unit, there should be no technological barriers to scaling them up to a utility sized facility. Twenty-four baghouse-equipped coal-fired utility steam generators are scheduled to be operating by the end of 1978 and an additional 30 units are planned to start operation after 1978. About two-thirds of these planned units will be larger than 150-MW electrical output capacity, and more than one-third of these planned baghouse systems will be for units being fired with coal containing more than 3 percent sulfur. EPA therefore believes that baghouses have been adequately demonstrated for even the largest utility-sized facility.

EPA collected emission test data from seven coal-fired steam generators controlled by wet particulate matter scrubbers. Data from five of the seven resulted in emission levels less than 21 ng/J heat input (0.05 lb/million Btu). Data from only one of the seven were less than 13 ng/J (0.02 lb/million Btu) heat input. In view of this, EPA believes that wet particulate matter scrubbers would not be capable of complying with the proposed standards under most conditions.

EPA considered proposing the standard at a level of 21 ng/J (0.05 lb/million Btu) in order to allow the application of wet particulate matter scrubbers in addition to baghouses and ESP's. This option was rejected, because EPA believes that allowing scrubbers would cause an increase in the emissions of fine particulate matter without compensating advantages. In addition to 60 percent higher emissions, a particulate matter scrubber would require three times as much energy to operate as a dry control system, and would also increase water consumption and waste water treatment requirements. An increase in fine particulate emissions would have an adverse effect on visibility. The primary suggested advantage to allowing the use of scrubbers for particulate matter control would be to allow a single scrubber to control both SO_2 and particulate matter emissions which would result in a cost savings.

The Department of Energy (DOE) and others believe that the proposed standard of 3 ng/J (0.03 lb/million Btu) will preclude the use of ESP's on facilities using low-sulfur coal and require baghouse control which they believe has not been demonstrated on utility-size facilities. Because of this, DOE recommends that the standard be no less than 21 ng/J (0.05 lb/million Btu). The Utility Air Regulatory Group (UARG) also maintains that baghouses have not been adequately

demonstrated, particularly when firing high-sulfur coal. They further believe that ESP's cannot achieve the proposed standard of 13 ng/J at reasonable cost. In view of this, UARG recommends an emission limitation of 34 ng/J (0.08 lb/million Btu). In doing so, they maintain a 34-ng/J standard would encourage baghouses but not eliminate precipitators from use.

EPA has investigated the possibility that FGD control systems affect particulate matter emissions. Three possible mechanisms were investigated: (1) FGD system sulfate carryover from the scrubber slurry, (2) particulate matter removal by the FGD system, and (3) particulate matter generation by the FGD system through condensation of sulfuric acid mist (H_2SO_4).

To address the first mechanism, EPA obtained data from three different steam generators that were all equipped with FGD systems and that had low particulate matter emission levels at the FGD inlet. The data from all three facilities indicated that particulate emissions did not increase through the FGD system. Proper mist eliminator design and maintenance is important in preventing scrubber liquid entrainment which could cause the outlet particulate loading to exceed inlet particulate loading.

In relation to the second mechanism, FGD system removal of particulate matter, the data from the three FGD systems available to EPA indicated that particulate matter emissions were reduced by the FGD systems in all three cases. That is, the particulate matter discharge concentration from the FGD system was less than the concentration at the FGD inlet. This property has been particularly noted at steam generators equipped with ESP's upstream of FGD systems.

The third mechanism is the potential condensation of sulfuric acid mist (H_2SO_4) from sulfur trioxide (SO_3) in the flue gas. At a typical steam generator, 97 to 99 percent of the fuel sulfur is converted to SO_2 and 1 to 3 percent is converted to SO_3. Typical stack gas temperatures at a coal-fired steam generator without an FGD system are between 150° C and 200° C (300° F to 400° F). At these temperatures, most SO_3 remains in a gaseous state and does not form sulfuric acid. At lower temperatures, water vapor condenses and combines with SO_3 to form sulfuric acid. The dewpoint temperature for sulfuric acid ranges between 120° C (250° F) and 175° C (350° F). The lower temperature would correspond to low-sulfur coal and higher temperature would correspond to high-sulfur coal.

Available test data indicate that an FGD system would remove about 50 percent of the SO_3 in the flue gas and thus reduce the potential for sulfuric acid mist formation. However, if sulfuric acid mist is formed in the flue gases, there is a potential for its interference with the particulate matter performance test. Under method 5, a sample is extracted at a probe temperature of about 160° C (320° F). This assures that SO_3 does not condense on the sampling filter when sampling powerplants that do not have FGD systems. However, when sampling powerplants with FGD systems (particularly when combusting high-sulfur coal), there is a potential for sulfuric acid mist to form at the reduced flue gas temperatures. If acid mist forms, it may interact within the sampling train to form sulfate compounds that are not vaporized at the 160° C (320° F) sampling temperature. Also, sulfuric acid mist may remain deposited within the test probe itself. In either case, the net result could be a high measurement of particulate matter.

EPA obtained data from three FGD equipped powerplants to determine acid mist formation potential. All of these plants were firing low-sulfur coal. The data indicate that SO_3 conversion to sulfuric acid mist is not a problem. EPA believes these data support the conclusion that an FGD system on low-sulfur coal-fired powerplants does not increase particulate emissions through sulfuric acid formation. Thus, EPA believes compliance with the proposed particulate matter standard is demonstrated to be achievable when firing low-sulfur coal.

In a case where an FGD system is used with higher sulfur coal, sufficient data have not become available to fully assess the effect of sulfuric acid formation on measured particulate matter. The proposed standard is based on emission test data at the particulate matter control device discharge prior to any FGD system. EPA plans to continue investigating this subject and will consider any data availabale on the impact of sulfuric acid mist on the particulate matter standard.

The 1977 amendments require that EPA specify, in addition to an emission limitation, a percent reduction in uncontrolled emission levels for fossil fuel-fired stationary sources. The proposed standard would require a 99-percent reduction for solid fuels and a 70-percent reduction for liquid fuels. Because of the difficulty of sampling particulate matter upstream of the control device (due to the complex particulate matter sampling conditions), the proposed standard would not require direct performance testing for the particulate matter emission reduction level. The percent reduction is not controlling, and performance testing for the emission limitation would satisfy the requirements for performance testing.

EPA is requesting comments on the proposed level of the particulate matter standard and the basis for the standard.

NO_x

The proposed NO_x emission standards are based on emission levels achievable with a properly designed and operated steam generator which utilizes combustion modification techniques to reduce NO_x formation. The proposed standards are as follows:

(1) 86 ng/J heat input (0.20 lb/million Btu) from the combustion of any gaseous fuel, except gaseous fuel derived from coal;

(2) 130 ng/J heat input (0.30 lb/million Btu) from the combustion of any liquid fuel, except shale oil and liquid fuel derived from coal;

(3) 210 ng/J heat input (0.50 lb/million Btu) from the combustion of subbituminous coal, shale oil, or any solid, liquid, or gaseous fuel derived from coal;

(4) 340 ng/J (0.80 lb/million Btu) from the combustion in a slag tap furnace of any fuel containing more than 25 percent, by weight, lignite which has been mined in North Dakota, South Dakota, or Montana;

(5) Combustion of a fuel containing more than 25 percent, by weight, coal refuse would be exempt from the NO_x standards and monitoring requirements;

(6) 260 ng/J (0.60 lb/million Btu) from the combustion of any solid fuel not specified under (3), (4), or (5);

(7) Percent reductions in uncontrolled NO_x emission levels would be required; however, the percent reduction would not be controlling, and compliance with the NO_x emission limits (ng/J) would assure compliance with the percent reduction requirements. the National Appeals Board

Most new electric utility steam generating untis are expected to burn pulverized coal. Consequently, the NO_x studies used to develop the proposed standards have concentrated on the combustion of pulverized coal. The proposed standards for pulverized coal are based on the application of combustion modification techniques (i.e., staged combustion, low excess air, and reduced heat release rate) which EPA has concluded represent the best demonstrated system of continuous emission reduction (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact, and energy requirements) for electric utility power plants.

The proposed standards would require continuous compliance (based on a 24-hour average), except during periods of startup, shutdown, or malfunction as provided under 40 CFR 60.8. Percent reduction requirements are in-

cluded in the proposed standards as a result of provisions in the 1977 Amendments. As with the proposed particulate matter standard, the percent reductions for NO_x are not controlling, and compliance testing for the NO_x emission limitations (ng/J) would satisfy all compliance testing requirements for NO_x.

Combustion modification techniques limit the formation of NO_x in the boiler by reducing flame temperatures and by minimizing the availability of oxygen during combustion. Elevated temperatures and high oxygen levels would otherwise enhance the formation of NO_x. The levels to which NO_x emissions can be reduced with combustion modifications depend on the type of fuel burned, the boiler design, and boiler operating practices. All four of the major boiler manufacturers utilize combustion modification techniques in their modern units; however, some manufacturers' techniques may be more effective than others.

EPA has conducted NO_x emmission tests at six modern electric utility steam generating units which burn pulverized coal, representing two of the major boiler manufacturers. These tests indicate that during low NO_x operation of modern units, emission levels below 210 ng/J heat input (0.50 lb/million Btu) are easily attainable. If the potential side effects associated with low NO_x operation were not considered, it would be reasonable to establish an NO_x emission limit for pulverized coal-fired units at 210 ng/J heat input.

The side effects EPA has considered include: Boiler tube wastage (corrosion); slagging; increased emissions of particulates, carbon monoxide, polycyclic organic matter, and other hydrocarbons; boiler efficiency losses; carbon loss in the ash; low steam temperatures; and possible operating hazards (including boiler explosions). In EPA's judgment only boiler tube wastage could be a potential problem at NO_x emission levels necessary to meet a standard of 210 ng/J.

Tube wastage is the deterioration of boiler tube surfaces due to the corrosive effects of ash in the presence of a reducing atmosphere. A reducing atomsphere often results from operation of a boiler under conditions required to minimize NO_x emissions. The severity of tube wastage is believed to vary with several factors, but especially with the quality of the coal burned. For example, high sulfur Eastern coal generally causes more of a tube wastage problem than low sulfur Western coal. Serious tube wastage can shorten the life of a boiler and result in expensive repairs.

Because of the potential problem from tube wastage, EPA does not believe that an emission limit below the proposed level of 260 ng/J heat input for Eastern bituminous coals would be reasonable even though emission data alone would tend to support a lower limit. For low rank Western coals, however, there is a much smaller tube wastage potential at low NO_x levels, and a lower emission limit is justified. Hence, EPA is proposing an emission limit of 210 ng/J heat imput for units burning low rank Western coals. These coals are classified in the proposed standards as subbituminous, according to ASTM methods. EPA believes that the proposed distinction made between low rank Western (subbituminous) coal and other coals represents the best method for distinguishing between coals with low and high tube wastage potentials.

Although most new utility power plants will fire pulverized coal, other fuels may also be burned. Emission limits for these fuels are also proposed.

The proposed NO_x emission limits for units which burn liquid and gaseous fuels are at the same levels as the emission limits originally promulgated in 1971 under subpart D for large steam generators which burn oil and gas. EPA did not conduct a detailed study of combustion modification or NO_x flue gas treatment for oil- or gas-fired boilers because few, if any, oil- or gas-fired electric utility power plants are expected to be built in the future.

Several studies have been conducted which indicate that emissions from the combustion of liquid and gaseous fuels which are derived from coal, such as solvent refined coal and low Btu synthetic gas, may exceed the proposed emission limits for liquid fuels (130 ng/J) and gaseous fuels (86 ng/J). The reason is because fuels derived from coal will have fuel bound nitrogen contents which approach the levels found in coal rather than in natural gas and oil. Based on limited emission data from pilot-scale facilities and on the known emission characteristics of coal, EPA believes that an achievable emission limit for solid, liquid, of gaseous fuels derived from coal would be 210 ng/J (0.50 lb/million Btu). Tube wastage of other boiler problems are not expected to occur from boiler operation at levels as low as 210 ng/J when firing these fuels because of their low sulfur and ash contents.

Very little is known about the emission characteristics of shale oil. However, since shale oil typically has a higher fuel-bound nitrogen content than fuel oil, it may be impossible for a well-controlled unit burning shale oil to achieve the proposed NO_x emission limit for liquid fuels. Shale oil does have a similar nitrogen content to coal, and it is reasonable to expect that the emission control techniques used for coal could also be used to limit NO_x emissions from shale oil combustion. Consequently, EPA proposes to limit NO_x emissions from units burning shale oil to 210 ng/J, the same limit proposed for subbituminous coal. There is no evidence that tube wastage or other boiler problems would result from operation of a boiler at 210 ng/J when shale oil is burned.

The combustion of coal refuse was exempted from the subpart D standards because the only furnace design believed capable of burning coal refuse, the slag tap furnace, inherently produces NO_x emissions in excess of the NO_x standard. Since no new information has become available, EPA would continue the coal refuse exemption under the proposed standards.

The proposed emission limits for lignite combustion were developed earlier as amendments to the original standards under subpart D. Since no new information on NO_x emission rates resulting from lignite combustion in electric utility power plants has become available, the lignite limits have been incorporated into these proposed standards without revision.

While EPA believes that the proposed emission limitations for bituminous and subbituminous coals can be achieved without adverse effects, UARG recommends that the present NO_x emission limitation of 300 ng/J (0.7 lb/million Btu) be retained. In so doing, they argue that the potential adverse side effects that may result from operating a boiler under conditions required to meet the proposed standards have not been adequately studied over the long term. They also expressed concern that the proposed standards could have an anticompetitive effect, since they believe there may be only one boiler vendor who could meet the proposed standards on a continuous basis. Finally, they question whether there is sufficient continuous monitoring experience to warrant basing compliance on continuous monitoring results.

Studies

The background information including environmental and economic assessments for the proposed standards is divided into 4 documents, each with a title and a document number as follows:

"Electric Utility Steam Generating Units: Background Information for Proposed NO_x Emission Standards," EPA 450/2-78-006a;

"Electric Utility Steam Generating Units: Background Information for Proposed Particulate Matter Emission Standards," EPA 450/2-78-006a;

"Electric Utility Steam Generating Units: Background Information for Proposed SO_2 Emission Standards," EPA 450/2-78-007a; and

"Electric Utility Steam Generating Units: Background Information for Proposed SO_2

Emission Standards—Supplement," EPA 450/2-78-007a-1.

Much of the supporting information within the background information documents was obtained from consultant studies sponsored by EPA. Reports covering these studies are included in the docket at EPA headquarters and are available for inspection during normal office hours at each EPA regional office. The titles of the consultant studies are as follows:

1. "Flue Gas Desulfurization Systems: Design and Operating Parameters, SO_2 Removal Capabilities, Coal Properties and Reheat."
2. "Flue Gas Desulfurization System Capabilities for Coal-Fired Steam Generators."
3. "Boiler Design and Operating Variables Affecting Uncontrolled Sulfur Emissions from Pulverized Coal-Fired Steam Generators."
4. "Effects of Alternative New Source Performance Standards on Flue Gas Desulfurization System Supply and Demand."
5. "Evaluation of Physical Coal Cleaning as an SO_2 Emission Control Technique."
6. "The Impact of Modification/Reconstruction of Steam Generators on SO_2 Emissions."
7. "The Energy Requirements for Controlling SO_2 Emissions from Coal-Fired Steam/Electric Generators."
8. "The Solid Waste Impact of Controlling SO_2 Emissions from Coal-Fired Steam-Electric Generators."
9. "Water Pollution Impact of Controlling SO_2 Emissions from Coal-Fired Steam/Electric Generators."
10. "Particulate and Sulfur Dioxide Emission Control Costs for Large Coal-Fired Boilers."
11. "Review of New Source Performance Standards for SO_2 Emissions from Coal-Fired Utility Boilers."
12. "The Effect of Flue Gas Desulfurization Availability on Electric Utilities."
13. "Effects of Alternative New Source Performance Standards for Coal-Fired Electric Utility Boilers on the Coal Markets and Utility Capacity Expansion Plans."
14. "Flue Gas Desulfurization System Manufacturers Survey."
15. "Assessment of Manufacturer Capacity to Meet Requirements for Particulate Control in Utility and Industrial Boilers."
16. "Flue Gas Desulfurization Cost for Large Coal-Fired Boilers, August 10, 1978."
17. "The Ability of Electric Utilities with FGD to Meet Energy Demands."

In addition to the consultant studies, EPA studies were performed. One study involved the installation and operation of continuous SO_2 monitors on the inlet and outlet of commercial-scale FGD units. The purposes of the study were to determine: (1) The statistical characteristics of coal-fired boiler and FGD operation, (2) the variability of SO_2 inlet concentrations, (3) the ability of FGD to "damp out" SO_2 variability, and (4) SO_2 emissions as a function of averaging period.

A second EPA study included a diffusion modeling analysis to estimate the maximum ground-level concentration of SO_2 that would occur around small, medium, and large power plants for emission rates with and without flue gas reheat. The study also examined the estimated SO_2 concentrations that would occur around multi-boiler facilities. Surface and upper-air meteorological data for eight different geographical areas were used in the study.

EPA has also supplemented the economic, energy, and environmental impact assessment set forth in the background information document for the SO_2 standard (EPA 450/2-78-007a) by conducting two additional analyses. The first was initiated in February 1978, and results became available in late April. The second, which was completed in August, used revised assumptions pertaining to utility growth rates, oil prices, etc. The results of these studies are presented in sections 2 and 3 of the "Electric Utility Steam Generating Units: Background Information for Proposed SO_2 Emission Standards—Supplement," EPA 450/2-78-007a-1.

EPA has also taken into consideration studies prepared by other Governmental Agencies. One study is "The Demand for Western Coal and its Sensitivity to Key Uncertainties," draft report, 2nd edition, June 1978, which assessed the potential impact of this proposal on coal demand. This report was prepared by a consultant for the Department of Interior and the Department of Energy. In addition the analysis of alternative standards prepared by the Department of Energy, and transmitted to EPA by Mr. John F. O'Leary, Deputy Secretary, on July 6 and August 11, 1978, was also considered.

A task force of American experts in scrubber technology visited Japan to evaluate Japanese scrubber performance. The findings (Maxwell, Elder and Morasky, "Sulfur Oxides Control Technology in Japan," June 30, 1978) were also considered by EPA.

Performance Testing

PARTICULATE STANDARDS

Compliance with the proposed particulate matter standards would be determined by using EPA method 5 operated at a filter temperature up to 160°C (320°F). As an option, EPA method 17 may be used for stack gas temperature less than 160°C. EPA method 3 would be used to determine oxygen or carbon dioxide concentrations. These concentration measurements would then be used to compute particulate emissions in units of the standard as specified in proposed EPA method 19.

Compliance with opacity standards could be determined at any time by visual observations using EPA method 9. Except during startups, shutdowns, and malfunctions, all data from visual observations would be ued for determining compliance with the proposed opacity standard.

A continuous monitoring system for opacity would be required in the stack except when firing only gaseous fuels. The opacity data from the continuous monitor would not be used to determine compliance with the opacity standard. It would be used to assist in assuring the particulate matter control system is properly operated and maintained.

SO_2 AND NO_x STANDARDS

Performance tests. Compliance with the proposed SO_2 and NO_x standards would be determined using the data obtained from the required continuous monitoring systems. If an FGD system were used for SO_2 control, continuous SO_2 emission monitors would be required both upstream and downstream of the FGD system and used to determine compliance with the proposed 85 percent SO_2 reduction. As an option, compliance with the proposed SO_2 standards could be determined using both an "as fired" fuel sampler to determine the sulfur content and heating value of the fuel fired to the boiler, and a continuous SO_2 emission monitor after the FGD system to measure SO_2 emissions discharged into the atmosphere. In addition to crediting the SO_2 removed by the FGD system, this option would provide credit for sulfur removed by coal pulverizers and by the bottom ash and fly ash. The SO_2 percent reduction requirement and emission limitation would both be based on emission levels averaged over a 24-hour (daily) period. If fuel is treated prior to combustion to reduce SO_2 emissions, a sulfur removal credit would also be allowed. Procedures for determining sulfur removal credits are proposed under § 60.48a with EPA method 19.

Performance testing to determine compliance with the NO_x emission limitation (ng/J) would be determined on a continuous basis through the use of a continuous NO_x emission monitor. NO_x emission data would be averaged over a 24-hour (daily) period. Performance testing to determine compliance with the percent reduction requirements for NO_x would not be required. An affected facility would be assumed to be in compliance with the NO_x reduction requirements provided the facility is in compliance with the applicable NO_x emission limitation.

When the NO_x or SO_2 continuous monitoring system fails to operate properly, the source owner or operator would obtain emission data by:

1. Operation of a second monitoring system, or
2. Conducting manual tests using EPA reference methods during the period the continuous monitoring system is inoperative.

Operation of a second monitoring system would mean that the source owner would have a second system in operation at all times. Conducting the manual tests would mean that the source owner would have trained manpower available on an immediate basis to collect samples while the continuous monitoring system is inoperative. Manual test runs would be required on an hourly basis.

Since compliance with the proposed SO_2 and NO_x standards would be determined by continuous monitors, EPA is currently developing additional quality assurance procedures. These procedures would not change the present performance specifications for continuous monitoring systems, but would provide additional periodic field tests to assure the accuracy of the monitoring data. Appendix E under 40 CFR Part 60 is being reserved for these additional quality assurance procedures. Electric utility powerplants that would be subject to the proposed standard would be subject to the quality assurance procedures under appendix E when completed. This should not pose a problem since new sources affected by this proposed action are not expected to begin operation until about 1984.

Fuel pretreatment. Pretreatment of a fuel to remove sulfur or increase heat content would be credited toward the SO_2 percent reduction requirement. For example, by pretreatment of a 2.3 percent sulfur fuel (equivalent to 1,000 ng/J) to 1.7 percent sulfur (750 ng/J; 25 percent sulfur removal), the FGD system SO_2 control requirement would be reduced from 85 percent to 80 percent (750 ng/J reduced to 150 ng/J). An 85 percent emission reduction (1,000 ng/J to 150 ng/J) would be necessary for an FGD system if the fuel were fired untreated.

Fuel pretreatment credits would be given for removal of sulfur from fuel, including the resulting increase in fuel heat content. Examples of the type of equipment or processes for which credit would be given are:

1. Physical coal cleaning.
2. Solvent refining of coal.
3. Liquification of coal.
4. Gasification of coal.

Rotary breakers or coarse screens used to separate rock and other material from raw coal prior to processing or shipment are considered an integral part of the coal mining process and would not be considered as fuel pretreatment (see section 4.5.2.2 of EPA 450/2-78-007a-1).

The proposed standard would not require fuel to be pretreated before firing but would allow credit for pretreatment if used. The amount of sulfur removed by a fuel pretreatment process would be determined following procedures in EPA method 19 (appendix A). The owner or operator of the electric utility who would use the credit would be responsible for insuring that the EPA method 19 procedures are followed in determining SO_2 removal credit for pretreatment equipment.

Miscellaneous

As prescribed by section 111, establishment of standards of performance for electric utility steam generating units was preceded by the Administrator's determination that these sources contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare. In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test methods.

Under EPA's "new" sunset policy for reporting requirements in regulations, the reporting requirements in this regulation will automatically expire 5 years from the date of promulgation unless EPA takes affirmative action to extend them. To accomplish this, a provision automatically terminating the reporting requirements at that time will be included in the text of the final regulations.

It should be noted that standards of performance for new fossil fuel fired stationary sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. [Section 111(a)(1)]

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources located in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, section 173 of the act requires that a new or modified source constructed in an area which exceeds the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level which reflects the "lowest achievable emission rate" (LAER), as defined in section 171(3), for such category of source. The statute defines LAER as that rate of emission which reflects:

> (A) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event can the emission rate exceed any applicable new source performance standard (section 171(3)).

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (part C). These provisions require that certain sources (referred to in section 169(1)) employ "best available control technology" (as defined in section 169(3)) for all pollutants regulated under the Act. Best available control technology (BACT) must be determined on a case-by-case basis, taking energy, environmental and economic impacts, and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 (or 112) of the Act.

In all events, State implementation plans (SIPs) approved or promulgated under section 110 of the Act must provide for the attainment and maintenance of national Ambient Air Quality Standards designed to protect public health and welfare. For this purpose, SIPs must in some cases require greater emission reductions than those required by standards of performance for new sources.

Finally, States are free under section 116 of the Act to establish even more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than EPA's standards of performance under section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

EPA will review this regulation 4 years from the date of promulgation. this review will include an assessment of such factors as the need for integration with other programs, the exis-

tence of alternative methods, enforceability, and improvements in emission control technology.

Executive Order 12044, dated March 24, 1978, whose objective is to improve Government regulations, requires executive branch agencies to prepare regulatory analyses for regulations that may have major economic consequences. The proosed standards meet the criteria for preparation of a regulatory analysis as outlined in the Executive order. Therefore, a regulatory analysis has been prepared as required. The analysis is contained in the background information documents for the proposed standards. The regulatory analysis is not being published as a separate document because the work was begun before the President's Executive order was published. However, in order to present a better understanding of the analyses contained in the background information documents, a summary of the analyses is included in the preamble. The summary discusses in detail the alternatives considered.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for revisions determined by the Administrator to be substantial. The Administrator has determined that the proposed amendments are substantial and has prepared an economic impact assessment and included the required information in thebackground information documents.

Dated: September 11, 1978.

DOUGLAS M. COSTLE,
Administrator.

It is proposed that 40 CFR Part 60 be amended by revising the heading and § 60.40 of Subpart D, by adding a new Subpart Da, by adding a new reference method to Appendix A, and by reserving Appendix E as follows:

1. The heading for Subpart D is revised to read as follows:

Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators Constructed After August 17, 1971

2. Section 60.40 is amended by adding paragraph (a)(3) as follows:

§ 60.40 Applicability and designation of affected facility.

(a) * * *

(3) Is not subject to the provisions of Subpart Da.

* * * * *

(Sec. 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7601(a)).)

3. A new Subpart Da is added as follows:

Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978

Sec.

AUTHORITY: Sec. 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Contruction Is Commenced After September 18, 1978

§ 60.40a Applicability and designation of affected facility.

(a) The affected facility to which this subpart applies is each electric utility steam generating unit:

(1) Which is capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel); and

(2) For which construction or modification is commenced after September 18, 1978.

(b) This subpart applies to electric utility combined cycle gas turbines that are capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel in the steam generator. Only emissions resulting from combustion of fossil fuel in the steam generator are subject to this subpart. (The gas turbine emissions are subject to Subpart GG.)

§ 60.41a Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

(a) "Steam generating unit" means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil fuel-fired steam generators associated with combined cycle gas turbines; nuclear steam generators are not included). A steam generating unit includes the following systems:

(1) Fuel combustion system (including bunker, coal pulverizer, crusher, stoker, and fuel burners, as applicable).

(2) Combustion air system.

(3) Steam generating system (firebox, boiler tubes, etc.).

(4) Draft system (excluding the stack).

(b) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its maximum design electrical output capacity to an electrical distribution system for sale. Any steam distribution system that is constructed for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(c) "Fossil fuel" means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

(d) "Subbituminous coal" means coal that is classified as subbituminous A, B, or C according to the American Society of Testing and Materials' (ASTM) Standard Specification for Classification of Coals by Rank D388-66.

(e) "Lignite" means coal that is classified as lignite A or B according to the American Society of Testing and Materials' (ASTM) Standard Specification for Classification of Coals by Rank D388-66.

(f) "Coal refuse" means waste products from coal mining, physical coal cleaning, and coal refining operations (e.g. culm, gob, or other rejects) containing coal, ash matrix material, clay, and organic and inorganic material.

(g) "Potential combustion concentration" means the theoretical emissions (ng/J, lb/million Btu) that would result from combustion of a fuel in an uncleaned state (without emission control systems) and:

(1) For particulate matter is:

(i) 3,000 ng/J heat input (7.0 lb/million Btu) for solid fuel; and

(ii) 75 ng/J heat input (0.17 lb/million Btu) for liquid fuels.

(2) For sulfur dioxide is determined under § 60.48a(b).

(3) For nitrogen oxides is:

(i) 290 ng/J heat input (0.67 lb/million Btu) for gaseous fuels;

(ii) 310 ng/J heat input (0.72 lb/million Btu) for liquid fuels; and

(iii) 990 ng/J heat input (2.3 lb/million Btu) for solid fuels.

(h) "Combined cycle gas turbine" means a stationary gas turbine system where heat is recovered from the exhaust gases by passing the exhaust gases through a steam generating unit. fossil fuel may also be combusted in the steam generating unit.

(i) "Utility company" means the largest organization, business, or governmental entity that owns the affected facility (e.g. a holding company with operating subsidiary companies).

(j) "System capacity" means the sum of the rated electrical output capacity of all electric generating equip-

ment which is owned by the utility company and which is being operated or is capable of being operated (including fossil-fuel-fired steam generators, internal combustion engines, gas turbines, and nuclear power plants). The electrical generating capacity of electric generating equipment under multiple ownership is prorated based on ownership.

(k) "System emergency reserves" means the rated capacity of the single largest steam electric generating unit (including fossil-fuel-fired steam generators, internal combustion engines, gas turbines, and nuclear power plants) owned by the utility company. The electric generating capacity of electric generation equipment under multiple ownership is prorated based on ownership.

(l) "Available system capacity" means the capacity determined by subtracting the system load and the system emergency reserves from the system capacity.

(m) "Spinning reserve" means the sum of the unutilized capacity of all units of the utility company that are synchronized to the power distribution system and that are capable of immediately accepting additional load. The electrical generating capacity of electric generation equipment under multiple ownership is prorated based on ownership.

(n) "Emergency condition" means that period of time:

(1) When the electric generation load on an affected facility with a malfunctioning flue gas desulfurization system cannot be shifted because all available system capacity is being operated, or

(2) When all available system capacity is not being utilized and electric generation load is being shifted as quickly as possible from the affected facility to:

(i) One or more electric generating units held in spinning reserve, or

(ii) Another electrical generation system through the purchase of electric power.

(o) "Noncontinental areas" means the State of Hawaii, the Virgin Islands, Guam, American Samoa, and the Commonwealths of Puerto Rico and the Northern Mariana Islands.

(p) "Commercial demonstration plant" means:

(1) An affected facility commercially demonstrating an emerging technology, or

(2) Any of the affected facilities that combust the coal-derived fuel produced at a commercial demonstration coal conversion plant, demonstrating an emerging technology.

(q) "24-hour period" means the period of time between 12:01 a.m. and 12:00 midnight.

§ 60.42a Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which contain particulate matter in excess of:

(1) 13 ng/J heat input (0.03 lb/million Btu) derived from the combustion of solid, liquid, or gaseous fuel;

(2) 1 percent of the potential combustion concentration (99 percent reduction) when combusting solid fuel; and

(3) 30 percent of potential combustion concentration (70 percent reduction) when combusting liquid fuel.

(b) On and after the date the particulate matter performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity, except for one 6-minute period per hour of not more than 27 percent opacity.

§ 60.43a Standard for sulfur dioxide.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of:

(1) 340 ng/J heat input (0.80 lb/million Btu) derived from the combustion of any liquid or gaseous fuel;

(2) 520 ng/J heat input (1.2 lb/million Btu) derived from the combustion of any solid fuel except as provided under paragraph (b) of this section; and

(3) 15 percent of the potential combustion concentration (85 percent reduction) when combusting solid, liquid, or gaseous fuel, except as provided under paragraphs (b) and (c) of this section.

(b) The sulfur dioxide emissions allowed under paragraph (a) of this section may be exceeded up to three 24-hour periods during any calendar month, however, the sulfur dioxide emissions must be reduced to less than 25 percent of the potential combustion concentration (75 percent reduction) at all times.

(c) The requirements under paragraph (a)(3) of this section do not apply when any of the following conditions are met:

(1) The sulfur dioxide emitted to the atmosphere is less than 86 ng/J heat input (0.20 lb/million Btu).

(2) The affected facility is located in a noncontinental area.

(3) The affected facility is operated under an SO_2 commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.45a.

(d) For purposes of determining compliance with provisions of paragraph (a)(3) of this section, any reduction in potential sulfur dioxide emissions resulting from the following may be credited in accordance with § 60.48a(b):

(1) Fuel pretreatment.

(2) Coal pulverizers.

(3) Bottom ash and fly ash interaction.

(e) When different fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

$$PS_{SO_2} = x(340) + y(520)/100$$

where:

PS_{SO_2} is the prorated standard for sulfur dioxide when combusting different fuels simultaneously (ng/J heat input).

x is the percentage of total heat input derived from the combustion of gaseous and liquid fuel.

y is the percentage of total heat input derived from the combustion of solid fuel.

§ 60.44a Standard for nitrogen oxides.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which contain nitrogen oxides in excess of:

(1) 86 ng/J heat input (0.20 lb/million Btu) derived from the combustion of any gaseous fuel, except gaseous fuel derived from coal;

(2) 130 ng/J heat input (0.30 lb/million Btu) derived from the combustion of any liquid fuel, except shale oil and liquid fuel derived from coal;

(3) 210 ng/J heat input (0.50 lb/million Btu) derived from the combustion of:

(i) Subbituminous coal,

(ii) Shale oil, or

(iii) Any solid, liquid, or gaseous fuel derived from coal; except as provided under paragraph (c) of this section.

(4) 260 ng/J heat input (0.60 lb/million Btu) derived from the combustion of any solid fuel not specified under paragraphs (a)(3), (a)(5) or (b) of this section;

(5) 340 ng/J heat input (0.80 lb/million Btu) derived from the combustion in a slag tap furnace of any fuel containing more than 25 percent, by weight, lignite which has been mined in North Dakota, South Dakota, or Montana;

(6) 75 percent of the potential combustion concentration (25 percent re-

duction) when combusting gaseous fuel;

(7) 70 percent of the potential combustion concentration (30 percent reduction) when combusting liquid fuel; and

(8) 35 percent of the potential combustion concentration (65 percent reduction) when combusting solid fuel.

(b) Combustion of a fuel containing more than 25 percent, by weight, coal refuse is exempt from both the provisions of § 60.47a(a)(3) and paragraph (a) of this section.

(c) The requirements under paragraph (a) of this section do not apply when an affected facility is operated under an NO_x commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.45a.

(d) When two or more fuels, except as provided under paragraphs (a)(5) or (b) of this section, are combusted simultaneously, the applicable standard is determined by proration using the following formula:

$$PS_{NOx}w(86)+x(130)+y(210)+z(260)/100$$

where:

PS_{NOx} is the applicable standard for nitrogen oxides when multiple fuels are combusted simultaneously (ng/J heat input);

w is the percentage of total heat input derived from the combustion of fuels subject to the 86 ng/J heat input standard;

x is the percentage of total heat input derived from the combustion of fuels subject to the 130 ng/J heat input standard;

y is the percentage of total heat input derived from the combustion of fuels subject to the 210 ng/J heat input standard; and

z is the percentage of total heat input derived from the combustion of fuels subject to the 260 ng/J heat input standard.

§ 60.45a Commercial demonstration permit.

(a) An owner or operator of an affected facility proposing to demonstrate an emerging technology may apply to the Administrator for a commercial demonstration permit. The Administrator will issue a commercial demonstration permit in accordance with paragraph (d) of this section. Commercial demonstration permits may only be issued by the Administrator, and this authority will not be delegated.

(b) An owner or operator who is issued an SO_2 commercial demonstration permit by the Administrator is not subject to the SO_2 control requirements under § 60.43a(a)(3) but must, as a minimum, reduce SO_2 emissions to 20 percent of the potential combustion concentration (80 percent SO_2 control on a 24-hr basis)

(c) An owner or operator who is issued an NO_x commercial demonstration permit by the Administrator is not subject to the NO_x control requirements under § 60.44a but must, as a minimum, reduce NO_x emissions to 300 ng/J heat input (0.70 lb/million Btu; 24-hour average).

(d) Commercial demonstration permits may not exceed the following equivalent MW electrical generation capacity for any one technology category, and the total equivalent MW electrical generation capacity for all commerical demonstration plants may not exceed 15,000 MW.

Technology	Pollutant	Equivalent MW electrical capacity
Solvent refined coal (I)	SO_2	6,000-10,000
Fluidized bed combustion (atmospheric).	SO_2	400-3,000
Fluidized bed combustion (pressurized).	SO_2	400-1,200
Coal liquifaction	NO_x	750-10,000
Total allowable for all technologies.		15,000

§ 60.46a Compliance provisions.

(a) Compliance with the particulate matter emission limitation under § 60.42(a)(1) constitutes compliance with the percent reduction requirements for particulate matter under § 60.42a(a) (2) and (3).

(b) Compliance with the nitrogen oxides emission limitation under § 60.44a(a)(1), (2), (3), (4), and (5) as applicable, constitutes compliance with the percent reduction requirements under §60.44a(a)(6), (7), and (8).

(c) Following the initial performance tests for sulfur dioxide and nitrogen oxides required under §60.8, each 24-hour period constitutes a separate performance test. The nitrogen oxides emission standards under §60.44a apply at all time except during periods of startup, shutdown, or malfunction. The sulfur dioxide emission standards under §60.43a apply at all times except during periods of startup, shutdown, or when both emergency conditions exist and the procedures under paragraph (d) of this section are implemented.

(d) During emergency conditions an affected facility with a malfunctioning flue gas desulfurization system may continue operation if sulfur dioxide emissions are minimized by:

(1) Continued operation of all operable flue gas desulfurization system modules,

(2) Only by-passing flue gases around totally inoperable flue gas desulfurization system modules, and

(3) Designing, constructing, and operating a spare flue gas desulfurization system module in affected facilities larger than 365 MW heat input (1,250 million Btu/hr).

§60.47a Emission monitoring.

(a) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system for measuring the opacity of emissions discharged to the atmosphere, except where gaseous fuel is the only fuel combusted. If opacity interference exists in the stack (for example, from the use of an FGD system), the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the sulfur dioxide control system), alternate parameters indicative of the particulate matter control system's performance are monitored (subject to the approval of the Administrator).

(b) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system for measuring sulfur dioxide emissions, except where natural gas is the only fuel combusted, as follows:

(1) Sulfur dioxide emissions are monitored at both the inlet and outlet of the sulfur dioxide control device.

(2) For a facility which qualifies under the provisions of §60.43a(c), sulfur dioxide emissions are only monitored as discharged to the atmosphere.

(3) An "as fired" fuel monitoring system (upstream of coal pulverizers) meeting the requirements of method 19 (Appendix A) may be used to determine potential sulfur dioxide emissions in place of a continuous sulfur dioxide emission monitor at the inlet to the sulfur dioxide control device as required under paragraph (b)(1) of this section.

(4) If a facility which complies with §60.43a(a) solely through the provisions under §60.43a(d), then sulfur dioxide emissions are only monitored at the outlet of the sulfur dioxide contol device.

(c) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides emissions discharged to the atmosphere.

(d) The owner or operator of an affected facility shall install, calibrate, maintain, and operate an oxygen or carbon dioxide monitoring system to measure the oxygen or carbon dioxide content of the flue gas at each location where sulfur dioxide or nitrogen oxides emissions are monitored.

(e) The owner or operator of an affected facility shall operate continuous emission monitoring systems during all periods the affected facility is operated except for the following:

(1) A maximum of sixty (60) minutes each day for daily zero and calibration checks or adjustments.

(2) A maximum of eight (8) hours per month for routine maintenance.

(f) During periods of operation of the affected facility when continuous monitoring systems (and spare monitoring systems if used) are not operable, the owner or operator of the affected facility shall conduct performance tests consisting of manual testing each hour until the continuous monitor system is returned to service. Each hourly test is performed as follows:

(1) Reference methods 3, 6, and 7, as applicable, are used. The sampling location(s) are the same as those used for the continuous monitoring system.

(2) For method 6, the minimum sampling time shall be 20 minutes and the minimum sampling volume 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two samples taken at approximately 30-minute intervals constitutes one run. The arithmetic mean of the runs obtained during a 24-hour period is reported as the average for that period. For determination of FGD removal efficiency, inlet and outlet sampling is conducted simultaneously.

(3) For method 7, each run consists of at least four grab samples taken at approximately 15-minute intervals. The arithmetic mean of the four samples constitutes the 1-hour run. The arithmetic mean of the runs obtained during a 24-hour period is reported as the average for that period.

(4) For method 3, the oxygen or carbon dioxide sample is obtained simultaneously at the same location in the duct as the samples collected using methods 6 and 7. For method 7, the oxygen sample is obtained using the grap sampling and analysis procedures of method 3.

(5) For each run using method 19 in appendix A to this part, the emissions expressed in ng/J (lb/million Btu) are determined. The arithmetic mean of the runs performed during a 24-hour period is reported as the average for that period.

(g) The following procedures are used for monitoring system performance evaluations under §60.13(c) and calibration checks under §60.13(d):

(1) Reference method 6 or 7, as applicable, is used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

(2) Sulfur dioxide or nitrogen oxides, as applicable, is used for preparing calibration gas mixtures under performance specification 2 of appendix B to this part.

(3) For affected facilities burning only fossil fuel, the span value for a continuous monitoring system for measuring opacity is between 60 and 80 percent and for a continuous monitoring system measuring nitrogen oxides is determined as follows:

[Parts per million]

Fossil fuel	Span value for nitrogen oxides
Gas	500
Liquid	500
Solid	1,000
Combinations	500 (x + y) + 1,000z

where:

x=the fraction of total heat input derived from gaseous fossil fuel,

y=the fraction total heat input derived from liquid fossil fuel, and

z=the fraction of total heat input derived from solid fossil fuel.

(4) All span values computed under paragraph (b)(3) of this section for burning combinations of fossil fuels are rounded to the nearest 500 ppm.

(5) For affected facilities burning fossil fuel, alone or in combination with non-fossil fuel, the span value of the sulfur-dioxide continuous monitoring system at the inlet to the sulfur-dioxide-control device is 200 percent of the potential emissions of the fuel fired, and at the outlet of the sulfur-dioxide-control device is 50 percent of potential emissions. When the percent fuel sulfur content changes by 0.5 (24-hour average) or more, the continuous monitoring system shall be respanned.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414).)

§ 60.48a Compliance determination procedures and methods.

(a) The following procedures and reference methods are used to determine compliance with the standards for particulate matter under § 60.42a:

(1) Method 3 is used for gas analysis when applying method 5 or method 17.

(2) Method 5 is used for determining particulate matter emissions and associated moisture content. Method 17 may be used for stack gas temperatures less than 160° C (320° F).

(3) For method 5 or method 17, method 1 is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(4) For method 5, the probe and filter holder heating system in the sampling train is set to provide a gas temperature no greater than 160° C (320° F).

(5) For determination of particulate emissions, the oxygen or carbon-dioxide sample is obtained simultaneously with each run of method 5 or method 17 by traversing the duct at the same sampling location. Method 1 is used for selection of the number of traverse points except that no more than 12 sample points are required.

(6) For each run using method 5 or method 17, the emission rate expressed in ng/J is determined using the oxygen or carbon-dioxide results and particulate results obtained under this section, and using the dry F-factor and dry basis emission rate calculation procedure contained in method 19 (appendix A).

(b) The following procedures and methods are used to determine compliance with the sulfur dioxide standard under § 60.43a:

(1) Determine the percent of potential combustion concentration (percent PCC) emitted to the atmosphere as follows:

(i) Determine the percent sulfur reduction achieved by any fuel pretreatment using the procedures in method 19 (appendix A; optional procedure). Calculate the average percent reduction on a quarterly basis using fuel analysis data.

(ii) Determine the percent sulfur dioxide reduction achieved by any sulfur dioxide control system using continuous sulfur dioxide emission monitors or an "as fired" fuel monitor (optional procedure) in conjunction with a continuous sulfur-dioxide-emission monitor and following the procedures in method 19 (appendix A). If 24 hours of data are not available (such as during startup or shutdown), all available valid data are averaged for each 24-hour period.

(iii) Determine atmospheric sulfur dioxide emissions as a percent of the potential combustion concentration (percent PCC) as follows: Use the results obtained in paragraphs (b)(1) (i) (optional) and (ii) of this section and the procedures in method 19 (appendix A) to calculate the overall percent reduction (percent R_o) of the potential sulfur dioxide emissions. Results are calculated for each 24-hour period using the quarterly average percent sulfur reduction determined for fuel pretreatment from the previous quarter and the sulfur dioxide reduction for each 24-hour period determined for each day in the current quarter. Calculate the percent of potential combustion concentration emitted to the atmosphere using the following equation:

$$\text{Percent PCC} = 100 - \text{percent } R_o$$

(2) Determine sulfur dioxide and nitrogen oxides emission rates using method 19 (appendix A). Emission rates are calculated for each 24-hour period and shall be considered to constitute a three-run performance test. If 24 hours of data are not available in a 24-hour period (such as during startup or shutdown), all available valid data for the period are averaged.

(c) The procedures and methods outlined in method 19 (appendix A) are

used in conjunction with the 24-hour nitrogen-oxides emission data collected under § 60.47a to determine compliance with the applicable nitrogen oxides standard under § 60.44a.

(d) Electric utility combined cycle gas turbines are performance tested for particulate matter, sulfur dioxide, and nitrogen oxides using the procedures of method 19 (appendix A). The sulfur dioxide and nitrogen oxides emission rates from the gas turbine used in method 19 (appendix A) calculations are determined when the gas turbine is performance tested under subpart GG. The potential uncontrolled particulate matter emission rate from a gas turbine is defined as 17 ng/J (0.04 lb/million Btu) heat input.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414).)

§ 60.49a Reporting requirements.

(a) For sulfur dioxide, nitrogen oxides, and particulate matter emissions, the performance test data from the initial performance test and from the performance evaluation of continuous monitors are submitted to the Administrator.

(b) For sulfur dioxide and nitrogen oxides, all emission data (24-hour daily average) collected subsequent to the initial performance test are submitted to the Administrator. The required data include the following information for each 24-hour period:

(1) Calendar date;

(2) Sulfur dioxide and nitrogen oxides emission rates (ng/J or lb/million Btu, 24-hour average);

(3) Percent reduction of the potential combustion concentration of sulfur dioxide (24-hour average) (not required for nitrogen oxides);

(4) Number of hours of valid emission data collected during each 24-hour daily period;

(5) Identification of periods when emissions exceed the applicable standards under either § 60.43a or § 60.44a;

(6) Identification of periods of startup or shutdown that resulted in emissions exceeding the applicable standards under either § 60.43a or § 60.44a;

(7) Identification of periods when control system malfunction resulted in emissions in excess of applicable nitrogen oxides standards under § 60.44a;

(8) Identification of "F" factor used for calculations, and type of fuel combusted; and

(9) Identification of periods when any continuous monitoring systems are not operating and identification of pollutant to be monitored.

(c) If any standards under § 60.43a are exceeded during emergency conditions because of control system malfunction, the owner or operator of the affected facility shall submit a signed statement:

(1) Indicating if conditions of §§ 60.41a(n) and 60.46a(d) were met during each period; and

(2) Listing the:

(i) Time periods the emergency condition existed;

(ii) Electrical output and demand on the owner's or operator's electric utility system and the affected facility;

(iii) Amount of power purchased from the interconnected reliability council during the emergency period;

(iv) Percent reduction in emissions achieved;

(v) Atmospheric emission rate (ng/J) of the pollutant discharged; and

(vi) Actions taken to correct control system modification.

(d) If fuel pretreatment credit toward the sulfur dioxide emission standard under § 60.43a is claimed, the owner or operator of the affected facility shall submit a signed statement:

(1) Indicating what percentage cleaning credit was taken for the calendar quarter, and whether the credit was determined in accordance with the provisions of § 60.48a and method 19 (appendix A); and

(2) Listing the quantity heat content and date each pretreated fuel shipment was received during the previous quarter, the name and location of the fuel pretreament facility, and the total quantity and total heat content of all fuels received at the affected facility during the previous quarter.

(e) For the purposes of the reports required under § 60.7, periods of excess emissions are defined as all 6-minute periods during which the average opacity exceeds the applicable opacity standard under § 60.42a(b). Opacity levels in excess of the applicable opacity standard and the date of such excesses are submitted to the Administrator each calendar quarter.

(f) The owner or operator of an affected facility shall submit the written reports required under this section and subpart A to the Administrator for every calendar quarter. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414).)

4. Appendix A to part 60 is amended by adding new reference method 19 as follows:

APPENDIX A—REFERENCE METHODS

* * * * *

METHOD 19. DETERMINATION OF SULFUR-DIOXIDE REMOVAL EFFICIENCY AND PARTICULATE, SULFUR DIOXIDE AND NITROGEN OXIDES EMISSION RATES FROM ELECTRIC UTILITY STEAM GENERATORS

1. Principle and applicability.

1.1 Principle.

1.1.1 Fuel samples from before and after fuel pretreatment systems are collected and analyzed for sulfur and heat content, and the percent sulfur dioxide (ng/Joule, lb/million Btu) reduction is calculated on a dry basis. (Optional procedure.)

1.1.2 Sulfur dioxide and oxygen or carbon dioxide concentration data obtained from sampling emissions upstream and downstream of sulfur-dioxide-control devices are used to calculate sulfur-dioxide removal efficiencies. (Minimum requirement.) As an alternative to sulfur-dioxide monitoring upstream of sulfur-dioxide-control devices, fuel samples may be collected in an as-fired condition and analyzed for sulfur and heat content. (Optional procedure.)

1.1.3 An overall sulfur dioxide emission reduction efficency is calculated from the efficiency of fuel pretreatment systems and the efficiency of sulfur dioxide control devices.

1.1.4 Particulate, sulfur dioxide, nitrogen oxides, and oxygen or carbon dioxide concentration data obtained from sampling emissions downstream from sulfur dioxide control devices are used along with F factors to calculate particulate, sulfur dioxide, and nitrogen-oxides emission rates. F factors are values relating combustion gas volume to the heat content of fuels.

1.2 Applicability. This method is applicable for determining sulfur removal efficiencies of fuel pretreatment and sulfur-dioxide-control devices and the overall reduction of potential sulfur dioxide emissions from electric utility steam generators. This method is also applicable for the determination of particulate, sulfur dioxide, and nitrogen oxides emission rates.

2. *Determination of sulfur-dioxide removal efficiency of fuel pretreatment systems* (optional).

2.1 Solid fossil fuel.

2.1.1 Sample increment collection. Use ASTM D 2234,* type I, conditions A, B, or C, and systematic spacing. Determine the number and weight of increments required per gross sample representing each coal lot according to table 2 or paragraph 7.1.5.2 of ASTM D 2234.* Collect one gross sample for each raw coal lot and one gross sample for each product coal lot.

2.1.2 ASTM lot size. For the purpose of section 2.1.1, the product coal lot size is defined as the weight of product coal produced from one type of raw coal. The raw coal lot size is the weight of raw coal used to produce one product coal lot. Typically, the lot size is the weight of coal processed in a 1-day (24 hours) period. If more than one type of coal is treated and produced in 1 day, then gross samples must be collected and analyzed for each type of coal. A coal lot size equaling the 90-day quarterly fuel quantity for a specific powerplant may be used if representative sampling can be conducted for the raw coal and product coal.

NOTE.—Alternate definitions of fuel lot sizes may be specified subject to prior approval of the Administrator.

2.1.3 Gross sample analysis. Determine the percent sulfur content (percent S) and gross calorific value (GCV) of the solid fuel on a dry basis for each gross sample. Use ASTM 2013* for sample preparation, ASTM D 3177* for sulfur analysis, and ASTM D 3173* for moisture analysis. Use ASTM D 3176* or D 2015* for gross calorific value determination.

2.2 Liquid fossil fuel.

*Use the most recent revision or designation of the ASTM procedure specified.

2.2.1 Sample collection. Use ASTM D 270* following the practices outlines for continuous sampling for each gross sample representing each fuel lot.

2.2.2 Lot size. For the purposes of section 2.2.1, the weight of product fuel from one pretreatment facility and intended as one shipment (shipload, bargeload, etc.) is defined as one product fuel lot. The weight of each crude liquid fuel type used to produce one product fuel lot is defined as one inlet fuel lot.

NOTE.—Alternate definitions of fuel lot sizes may be specified subject to prior approval of the Administrator.

2.2.3 Sample analysis. Determine the percent sulfur content (percent S) and gross calorific value (GVC). Use ASTM D 240* for the sample analysis. This value can be assumed to be on a dry basis.

2.3 Calculation of sulfur-dioxide removal efficency due to fuel pretreatment. Calculate the percent sulfur dioxide reduction due to fuel pretreatment using the following equation:

$$\%R_f = 100\left[1 - \frac{\%S_o/GCV_o}{\%S_i/GCV_i}\right]$$

Where:

$\%R_f$=Sulfur dioxide removal efficiency due pretreatment; percent.
$\%S_o$=Sulfur content of the product fuel lot on a dry basis; weight percent.
$\%S_i$=Sulfur dioxide content of the inlet fuel lot on a dry basis; weight percent.
GCV_o=Gross calorific value for the outlet fuel lot on a dry basis; kJ/kg (Btu/lb).
GCV_i=Gross calorific value for the inlet fuel lot on a dry basis; kJ/kg (Btu/lb).

NOTE.—If more than one fuel type is used to produce the product fuel, use the following equation to calculate the sulfur content per unit of heat content of the total fuel lot, %S/GCV:

$$\%S/GCV = \sum_{k=1}^{n} Y_k\ (\%S_k/GCV_k)$$

Where:

Y_k=The fraction of total mass input derived from each type, k, of fuel.
$\%S_k$=Sulfur content of each fuel type, k, on a dry basis; weight percent.
GCV_k=Gross calorific value for each fuel type, k, on a dry basis; kJ/kg (Btu/lb).
n=The number of different types of fuels.

3. *Determination of sulfur removal efficiency of the sulfur dioxide control device.*

3.1 Sampling. Determine SO_2 and CO_2 or O_2 oxygen concentrations at the inlet and outlet of the sulfur dioxide control system according to methods specified in the applicable subpart of the regulations.

(NOTE.—The downstream data are used to calculate the SO_2 emission rate. See section 5.) The inlet sulfur dioxide concentration may be determined through fuel analysis (optional, see section 3.3).

3.2 Calculation. Calculate the percent removal efficiency using the following equations as applicable:

$$\%R_{g(O_2)} = 100\left[1 - \frac{SO_{2do}}{SO_{2di}}\left(\frac{20.9 - \%O_{2di}}{20.9 - \%O_{2do}}\right)\right]$$

$$\%R_{g(CO_2)} = 100\left[1 - \left(\frac{SO_{2do}}{SO_{2di}} \times \frac{\%CO_{2di}}{\%CO_{2do}}\right)\right]$$

Where:

$\%R_g(O_2)$=Sulfur dioxide removal efficiency of the sulfur dioxide control device, O_2-based calculation; percent.
$\%R_g(CO_2)$=Sulfur dioxide removal efficiency of the sulfur dioxide control device, CO_2-based calculation; percent.
SO_{2i}=SO_2 concentration, dry basis; ppmv.
$\%CO_{2i}$=CO_2 concentration, dry basis; bolume percent.
$\%O_{2i}$=CO_2 concentration, dry basis; volume percent.
i=Inlet.
o=Outlet.

NOTE.—For devices measuring concentration on a wet basis, appropriate equations which account for moisture differences are approved in principle. See the appropriate paragraph in section 5.3. Methods for measuring moisture content are subject to approval of the Administrator.

3.3 As-fired fuel analysis (optional procedure). If the owner or operator of an electric utility steam generator chooses to determine the sulfur dioxide input rate at the inlet to the sulfur dioxide control device through an as-fired fuel analysis in lieu of data from a sulfur dioxide control system inlet gas monitor, fuel samples must be collected in accordance with the applicable paragraph in section 2. The sampling can be conducted upstream of any fuel processing, e.g., plant coal pulverization. For the purposes of this section, fuel lot size is defined as the weight of fuel consumed on one day (24 hours) and is directly related to the exhaust gas monitoring data at the outlet of the sulfur dioxide control system.

3.3.1 Fuel analysis. Fuel samples must be analyzed for sulfur content and gross calorific value. The ASTM procedures for determining sulfur content are defined in the applicable paragraphs of section 2.

3.3.2 Calculation of sulfur dioxide input rate. The sulfur dioxide input rate determined from fuel analysis is calculated by:

$$I_s = \frac{2.0(\%S_f)}{GCV} \times 10^7 \quad \text{for S.I. units.}$$

$$I_s = \frac{2.0(\%S_f)}{GCV} \times 10^4 \quad \text{for English units.}$$

Where:

I_s=Sulfur dioxide input rate from as-fired fuel analysis, ng/J (lb/million Btu).
$\%S_f$=Sulfur content of as-fired fuel, on a dry basis; weight percent.
GCV=Gross calorific value for as-fired fuel, on a dry basis; kJ/kg (Btu/lb).

3.3.3 Calculation of sulfur dioxide emission reduction using as-fired fuel analysis. The sulfur dioxide emission reduction efficiency is calculated using the sulfur input rate from paragraph 3.3.2 and the sulfur dioxide emission rate, E_{SO_2}, determined in the applicable paragraph of Section 5.3. The equation for sulfur dioxide emission reduction efficiency is:

$$\%R_{g(f)} = 100 \times \left(1.0 - \frac{E_{SO_2}}{I_s}\right)$$

Where:

$\%R_{g(f)}$=Sulfur dioxide removal efficiency of the sulfur dioxide control system using as-fired fuel analysis data; percent.
E_{SO_2}=Sulfur dioxide emission rate from sulfur dioxide control system; ng/J (lb/million Btu).
I_s=Sulfur dioxide input rate from as-fired fuel analysis; ng/J (lb/million Btu).

4. *Calculation of overall reduction in potential sulfur dioxide emission.*

4.1 The overall percent sulfur dioxide reduction calculation uses the sulfur dioxide concentration at the inlet to the sulfur dioxide control device as the base value. Any sulfur reduction realized through fuel cleaning is introduced into the equation as an average percent reduction, $\%R_f$.

4.2 Calculate the overall percent sulfur reduction as:

$$\%R_o = 100[1.0 - (1.0 - \frac{\%R_f}{100})\ (1.0 - \frac{\%R_g}{100})]$$

Where:

$\%R_o$=Overall sulfur dioxide reduction; percent.
$\%R_f$=Sulfur dioxide removal efficiency of fuel pretreatment from Section 2; percent. Refer to applicable subpart for definition of applicable averaging period.

$\%R_g$=Sulfur dioxide removal efficiency of sulfur dioxide control device either O_2 or CO_2-based calculation or calculated from fuel analysis and emission data, from Section 3; percent. Refer to applicable subpart for definition of applicable averaging period.

5. *Calculation of particulate, sulfur dioxide, and nitrogen oxides emission rates.*

5.1 Sampling. Use the outlet SO_2 and O_2 or CO_2 concentrations data obtained in section 3.1. Determine the particulate, NO_x, and O_2 or CO_2 concentrations according to methods specified in an applicable subpart of the regulations.

5.2 Determination of an *F* factor. Select an average *F* factor (section 5.2.1) or calculate an applicable *F* factor (section 5.2.2). If combined fuels are fired, the selected or calculated *F* factors are prorated using the procedures in section 5.2.3. *F* factors are ratios of the gas volume released during combustion of a fuel divided by the heat content of the fuel. A dry *F* factor (F_d is the ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted; a wet *F* factor (F_w) is the ratio of the volume of wet flue gases generated to the calorific value of the fuel combusted; and the carbon *F* factor (F_c) is the ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted. When pollutant and oxygen concentrations have been determined in section 5.1, wet or dry *F* factors are used. (F_w factors and associated emission calculation procedures are not applicable and may not be used after wet scrubbers; F_c or F_d factors and associated emission calculation procedures are used after wet scrubbers.) When pollutant and carbon dioxide concentrations have been determined in section 5.1, F_c factors are used.

5.2.1 Average F factors. Table 1 shows average F_d, F_w, and F_c factors (scm/J, scf/million Btu) determined for commonly used fuels. For fuels not listed in table 1, the F factors are calculated according to the procedures outlined in Section 5.2.2 of this section.

5.2.2 Calculating an F factor. If the fuel burned is not listed in table 1 or if the owner or operator chooses to determine an F factor rather than use the tabulated data, F factors are calculated using the equations below. The sampling and analysis procedures followed in obtaining data for these calculations are subject to the approval of the Administrator and the Administrator should be consulted prior to data collection. For SI Units:

$$F_d = \frac{227.0(\%H) + 95.7(\%C) + 35.4(\%S) \times 8.6(\%N) - 28.5(\%O)}{GCV}$$

$$F_w = \frac{347.4(\%H)+95.7(\%C)+35.4(\%S)+8.6(\%N)-28.5(\%O)+13.0(\%H_2O)^{**}}{GCV_w}$$

$$F_c = \frac{20.0(\%C)}{GCV}$$

For English Units:

$$F_d = \frac{10^6[3.64(\%H)+1.53(\%C)+0.57(\%S)+0.14(\%N)-0.46(\%O)]}{GCV}$$

** The $\%H_2O$ term may be omitted if %H and %O include the unavailable hydrogen and oxygen in the form of H_2O.

TABLE 1. F FACTORS FOR VARIOUS FUELS

Fuel-Type	F_d dscm/J	F_d dscf/10^6 Btu	F_w wscm/J	F_w wscf/10^6 Btu	F_c scm/J	F_c scf/10^6 Btu
Coal						
Anthracite[a]	2.72×10^{-7}	(10140)	2.84×10^{-7}	(10680)	0.486×10^{-7}	(1810)
Bituminous[a]	2.64×10^{-7}	(9820)	2.87×10^{-7}	(10680)	0.486×10^{-7}	(1810)
Lignite	2.66×10^{-7}	(9900)	3.22×10^{-7}	(12000)	0.515×10^{-7}	(1920)
Oil[b]	2.48×10^{-7}	(9220)	2.78×10^{-7}	(10360)	0.384×10^{-7}	(1430)
Gas						
Natural	2.36×10^{-7}	(8740)	2.86×10^{-7}	(10650)	0.279×10^{-7}	(1040)
Propane	2.35×10^{-7}	(8740)	2.75×10^{-7}	(10240)	0.322×10^{-7}	(1200)
Butane	2.35×10^{-7}	(8740)	2.80×10^{-7}	(10430)	0.338×10^{-7}	(1260)
Wood	2.49×10^{-7}	(9280)	----------	-------	0.494×10^{-7}	(1840)
Wood Bark	2.59×10^{-7}	(9640)	----------	-------	0.499×10^{-7}	(1860)

[a] As classified according to ASTM D 388-66

[b] Crude, residual, or distillate

$$F_w = \frac{10^6[5.57(\%H)+1.53(\%C)+0.57(\%S)+0.14(\%N)-0.46(\%O)+0.21(\%H_2O)^*]}{GCV_w}$$

$$F_c = \frac{10^6[0.321(\%C)]}{GCV}$$

Where:

F_d, F_w, and F_c have the units of scm/J or scf/million Btu; %H, %C, %S, %N, %O, and $\%H_2O$ are the concentrations by weight (expressed in percent) of hydrogen, carbon, sulfur, nitrogen, oxygen, and water from an ultimate analysis of the fuel; and GCV is the gross calorific value of the fuel in kJ/kg or Btu/lb and consistent with the ultimate analysis. Follow ASTM D 2015* for solid fuels, D 240* for liquid fuels, and D 1826* for gaseous fuels as applicable in determining GCV.

5.2.3 Combined fuel firing F factor. For affected facilities firing combinations of fossil fuels or fossil fuels and wood residue, the F_d, F_w, and F_c factors determined by Sections 5.2.1 or 5.2.2 of this section shall be prorated in accordance with the applicable formula as follows:

$$F_d = \sum_{k=1}^{n} x_k F_{dk} \quad \text{or}$$

$$F_w = \sum_{k=1}^{n} x_k F_{wk} \quad \text{or}$$

$$F_c = \sum_{k=1}^{n} x_k F_{ck}$$

*The $\%H_2O$ term may be omitted if %H and %O include the unavailable hydrogen and oxygen in the form of H_2).

Where:

x_k=The fraction of total heat input derived from each type of fuel, k.

n=The number of fuels being burned in combination.

5.3 Calculation of emission rate. Select from the following paragraphs the applicable calculation procedure and calculate the particulate, SO_2, and/NO_x emission rate. The values in the equations are defined as:

E=Pollutant emission rate, ng/J(lb/million Btu).

C=pollutant concentration, ng/scm(lb/scf).

NOTE.—It is necessary in some cases to convert measured concentration units to other units for these calculations. Use the following table for such conversions:

CONVERSION FACTORS FOR CONCENTRATION

From—	To—	Multiply by—
g/scm	ng/scm	10^9
mg/scm	ng/scm	10^6
lb/scf	ng/scm	1.602×10^{13}
ppm(SO_2)	ng/scm	2.660×10^6
ppm(NO_2)	ng/scm	1.912×10^6
ppm(SO_2)	lb/scf	1.660×10^{-7}
ppm(NO_2)	lb/scf	1.194×10^{-7}

5.3.1 Oxygen-based F factor procedure.

5.3.1.1 Dry basis. When both percent oxygen ($\%O_{2d}$) and the pollutant concentration (C_d) are measured in the flue gas on a dry basis, the following equation is applicable:

$$E = C_d F_d \left[\frac{20.9}{20.9 - \%O_{2d}}\right]$$

5.3.1.2 Wet basis. When both the percent oxygen ($\%O_{2w}$) and the pollutant concentration (C_w) are measured in the flue gas on a wet basis, the following equations are applicable: (NOTE.—F_w factors are not applicable after wet scrubbers.)

(a) $$E = C_w F_w \left[\frac{20.9}{20.9(1 - B_{wa}) - \%O_{2w}}\right]$$

where:

B_{wa}=Proportion by volume of water vapor in the ambient air. Approval may be given for determination of B_{wa} by on-site instrumental measurement provided that the absolute accuracy of the measurement technique can be demonstrated to be within +0.7 percent water vapor. In lieu of actual measurement, B_{wa} may be estimated as follows:

NOTE.—The following estimating factors are selected to assure that any negative error introduced in the term

$$\left(\frac{20.9}{20.9(1 - B_{wa}) - \%O_{2ws}}\right)$$

will not be larger than −1.5 percent. However, positive errors, or over-estimation of emissions, of as much as 5 percent may be introduced depending upon the geographic location of the facility and the associated range of ambient moisture.

(i) B_{wa}=0.027. This factor may be used as a constant value at any location.

(ii) B_{wa}=Highest monthly average of B_{wa} which occurred within a calendar year at the nearest Weather Service Station.

(iii) B_{wa}=Highest daily average of B_{wa} which occurred within a calendar month at the nearest Weather Service Station, calculated from the data for the past 3 years. This factor shall be calculated for each month and may be used as an estimating factor for the respective calendar month.

(b) $$E = C_w F_d \left[\frac{20.9}{20.9(1 - B_{ws}) - \%O_{2w}}\right]$$

where:

B_{ws}=Proportion by volume of water vapor in the stack gas.

This equation is approved in principle. Approval for actual practice is contingent upon demonstrating the ability to accurately determine B_{ws} such that any absolute error in B_{ws} will not cause an error of more than ± 1.5 percent in the term:

$$\left(\frac{20.9}{20.9(1 - B_{ws}) - \%O_{2ws}}\right)$$

5.3.1.3. Dry/Wet basis. When the pollutant concentration (C_w) is measured on a wet basis and the oxygen concentration ($\%O_{2d}$) or measured on a dry basis, the following equation is applicable:

$$E = \left[\frac{C_w F_d}{(1 - B_{ws})}\right]\left[\frac{20.9}{20.9 - \%O_{2d}}\right]$$

NOTE.—See section 5.3.1.2 on the usage of B_{ws}. When the pollutant concentration (C_d) is measured on a dry basis and the oxygen concentration ($\%O_{2d}$) is measured on a wet basis, the following equation is applicable:

$$E = C_d F_d \left[\frac{20.9}{20.9 - \frac{\%O_{2w}}{(1 - B_{ws})}}\right]$$

5.3.2 Carbon Dioxide-Based F Factor Procedure.

5.3.2.1 Dry Basis. When both the percent carbon dioxide ($\%CO_{2d}$) and the pollutant concentration (C_d) are measured in the flue gas on a dry basis, the following equation is applicable:

$$E = C_d F_c \left(\frac{100}{\%CO_{2d}}\right)$$

5.3.2.2 Wet basis. When both the percent carbon dioxide ($\%CO_{2w}$) and the pollutant concentration (C_w) are measured on a wet basis, the following equation is applicable:

$$E = C_w F_c \left(\frac{100}{\%CO_{2w}}\right)$$

5.3.2.3 Dry/Wet basis. When the pollutant concentration (C_w) is measured on a wet basis and the percent carbon dioxide ($\%CO_{2d}$) is measured on a dry basis, the following equation is applicable:

$$E = \left[\frac{C_w F_c}{(1 - B_{ws})}\right] \left[\frac{100}{\%CO_{2d}}\right]$$

NOTE.—See section 5.3.1.2 on the limitation on the usage of B_{ws}.

When the pollutant concentration (C_d) is measured on a dry basis and the percent carbon dioxide ($\%CO_{2w}$) is measured on a wet basis, the following equation is applicable:

$$E = C_d (1 - B_{ws}) F_c \left(\frac{100}{\%CO_{2w}}\right)$$

5.4 Calculation of emission rate from combined cycle-gas turbine systems. For gas turbine-steam generator combined cycle systems, the emissions from supplemental fuel fired to the steam generator or the percentage reduction in potential SO_2 emissions cannot be determined directly. Using measurements from the gas turbine exhaust (performance test, subpart GG) and the combined exhaust gases from the steam generator, calculate the emission rates for these two points following the appropriate paragraphs in section 5.3 (NOTE.—F_c factors shall not be used to determine emission rates from gas turbines because of the injection of steam or to calculate emission rates after wet scrubbers; F_d or F_c factor and associated calculation procedures are used to combine effluent emissions according to the procedure in paragraph 5.2.3.) The emission rate from the steam generator is calculated as:

$$E_{sg} = \frac{E_c - X_{gt} E_{gt}}{X_{sg}}$$

where

E_{sg}=Pollutant emission rate from steam generator effluent, ng/J (lb/million Btu).

E_c=Pollutant emission rate in combined cycle effluent; ng/J (lb/million Btu).

E_{gt}=Pollutant emission rate from gas turbine effluent; ng/J (lb/million Btu).

X_{sg}=Fraction of total heat input from supplemental fuel fired to the steam generator.

X_{gt}=Fraction of total heat input from gas turbine exhaust gases.

NOTE.—The total heat input to the steam generator is the sum of the heat input from supplemental fuel fired to the steam generator and the heat input to the steam generator from the exhaust gases from the gas turbine.

5.5 Effect of wet scrubber exhaust, direct-fired reheat fuel burning. Some wet scrubber systems require that the temperature of the exhaust gas be raised above the moisture dew-point prior to the gas entering the stack. One method used to accomplish this is direct-firing of an auxiliary burner into the exhaust gas. The heat required for such burners is from 1 to 2 percent of total heat input of the steam generating plant. The effect of this fuel burning on the exhaust gas components will be less than ± 1.0 percent and will have a similar effect on emission rate calculations. Because of this small effect, a determination of effluent gas constituents from direct-fired reheat burners for correction of stack gas concentrations is not necessary.

APPENDIX E—[RESERVED]

5. Appendix E is added to part 60 and reserved.

(Sec. 111, 114, and 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7414, and 7601(a)).

[FR Doc. 78-26005 Filed 9-18-78; 8:45 am]

[6560-01]

[40 CFR Part 60]

[FRL 967-2]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Public hearing on Proposed Standards for Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency.

ACTION: Hearing on proposed rule.

SUMMARY: This document announces a public hearing on the standards of performance for electric utility steam generating units which are proposed in this issue of the FEDERAL REGISTER.

DATES: Hearing date: November 29-30, 1978. See Supplementary Information for additional information.

ADDRESSES: Hearing held: GSA Auditorium, 18th and F Streets NW., Washington, D.C. See Supplementary Information for additional information.

FOR FURTHER INFORMATION CONTACT:

Mr. Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5271.

SUPPLEMENTARY INFORMATION: In accordance with section 307(d)(5) of the Clean Air Act, a public hearing on the standards of performance for electric utility steam generating units which are proposed in this issue of the FEDERAL REGISTER will be held as follows:

Date: November 29-30, 1978.

Place: GSA Auditorium, 18th and F Streets NW., Washington, D.C.

Time: 9 a.m. to 4 p.m.

Persons wishing to make oral presentations, which will be limited to 15 minutes each, should notify EPA by November 17, 1978, by contacting Ms. Shirley Tabler, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5421. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to Jack R. Farmer, Chief, Standards Development Branch (MD-13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, N.C. 27711.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the U.S. Environmental Protection Agency's Central Docket Section, Room 2903B, Waterside Mall, 401 M Street SW., Washington, D.C. 20460 (Docket No. OAQPS-78-1).

PURPOSE

As a result of a suit brought by the Sierra Club, the Agency is under a

court order to promulgate final regulations within 6 months of today's proposal. This is also the maximum period of time for promulgation permitted by section 307(d)(1) of the Clean Air Act. To comply with the schedule set forth in the court's order, but at the same time to maximize the public's involvement in the rulemaking, the Agency will provide over 14 weeks for public input.

The public involvement period will be structured as follows: Written comments may be submitted by any interested member of the public for a period of 60 days. Following the public comment period, 2 days of hearings will be held. The hearings will be legislative in nature with Agency officials empaneled to receive testimony and ask questions of all witnesses. Persons interested in testifying at the hearing should advise the Agency as instructed above. Though no cross-examination will take place at the hearings, written questions directed at witnesses testifying at the hearing may be submitted to the panel by members of the audience.

It is the expectation of the Agency that the hearing testimony will concentrate on clarifying, supplementing, and rebutting previously submitted written statements. The Agency recognizes that interested persons will require a period of time prior to the hearing to read the written submissions of other interested parties so that an informed comment may be made at the public hearing. In addition, all written comments received will be placed in the docket (docket No. OAQPS-78-1) as soon after receipt as practicable. All comments received will be on file no later than 2 calendar days after the close of the 60-day comment period. The docket is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, Room 2903B, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

As required by section 307(d)(5)(iv), the record of the public hearing will remain open for 30 days after completion of the hearing to provide an opportunity for any member of the public to submit rebuttal and supplementary information on the data presented at the hearing. Upon completion of this 30-day period, the record will be closed in order to provide sufficient time for the Administrator to carefully weigh all evidence submitted and to make the final decision on the basis of the formal record.

Dated: September 11, 1978.

DAVID G. HAWKINS,
Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 78-26006 Filed 9-18-78; 8:45 am]

TUESDAY, SEPTEMBER 19, 1978
PART VI

ENVIRONMENTAL PROTECTION AGENCY

■

PRIMARY ALUMINUM INDUSTRY

Standards of Performance for New Stationary Sources; Public Hearing

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 915-5]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Primary Aluminum Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed amendments would require primary aluminum plant performance tests to be conducted at least once each month, allow potroom emissions to be above the level of the current standard (but not above a higher limit of 1.25 kg/Mg (2.5 lb/ton)) if an owner or operator can establish that the emission control system was properly operated at the time the excursion above the current standard occurred, revise the reference method for determining fluoride emissions from potroom roof monitors, and clarify some provisions in the existing standard. These amendments are being proposed in response to arguments raised by four aluminum companies who filed petitions for review of the standard of performance. The intended effect of the proposed amendments is to account for the inherent variability of fluoride emissions from the aluminum reduction process and to require monitoring of fluoride emissions to insure proper operation and maintenance of the pollution control systems.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before November 20, 1978. *Public hearing.* The public hearing will be held on October 16, 1978, beginning at 9:30 a.m. and ending at 4:30 p.m. *Request to speak at hearing.* Persons wishing to attend the hearing or present oral testimony should contact EPA by October 11, 1978.

ADDRESSES: *Comments.* Comments should be submitted to Jack R. Farmer, Chief, Standards Development Branch (MD-13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, N.C. 27711.

Public hearing. The public hearing will be held at Waterside Mall, Room 3906, 401 M Street SW., Washington, D.C. 20460. Persons wishing to present oral testimony should notify Mary Jane Clark, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5271.

Standard support document. The support document for the proposed amendments may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711, telephone 919-541-2777. Please refer to Primary Aluminum Background Information: Proposed Amendments (EPA-450/2-78-025a).

Docket. The docket, number OAQPS-78-10, is available for public inspection and copying at the EPA Central Docket Section (A-130), Room 2903B, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5271.

SUPPLEMENTARY INFORMATION:

Proposed Amendments

It is proposed to amend Subpart S—Standards of Performance for Primary Aluminum Plants by requiring that performance tests be performed at least once each month during the life of an affected facility. Previously, performance tests were required only as provided in 40 CFR 60.8(a) (i.e., within 60 days after achieving the maximum production rate, but not later than 180 days after initial start- up and at other times as may be required by the Administrator under section 114 of the Clean Air Act). The proposed amendments would also allow potroom emissions to be above the level of the current standard (0.95 kg/Mg (1.9 lb/ton) for prebake plants and 1.0 kg/Mg (2.0 lb/ton) for Soderberg plants), but not above 1.25 kg/Mg (2.5 lb/ton), if an owner or operator can establish that the emission control system was properly operated and maintained at the time the excursion above the current standard occurred. Emissions may not be above 1.25 kg/Mg under any condition. Other amendments would (1) clarify Reference Method 14 procedures; (2) clarify the definition of "potroom group;" (3) replace English and metric units of measure with the International System of Units (SI); (4) allow the owner or operator of a new facility to apply to the Administrator for an exemption from the monthly testing requirement for primary and anode bake plant emissions; and (5) clarify the procedure for determining the rate of aluminum production for fluoride emission calculations.

Background

A standard of performance for new primary aluminum plants was promulgated on January 26, 1976 (41 FR 3826), and shortly thereafter petitions for review were filed by four U.S. aluminum companies. The principal argument raised by the petitioners was that the standard was too stringent and could not be consistently complied with by modern, well-controlled facilities. (Facilities which commenced construction prior to October 23, 1974, are not affected by the standard.) Following discussions with the petitioning aluminum companies, EPA conducted an emission test program at the Anaconda Aluminum Co. plant in Sebree, Ky. The Sebree plant is the newest primary aluminum plant in the United States, and its emisssion control system conforms with what EPA has defined as the best technological system of continuous emission reduction for new facilities. The purpose of the test program was to aid EPA in its reevaluation of the standard by expanding the emission data base. The test results were available in August of 1977 and indicated that there is some probability that the result of a performance test conducted at a modern, well-controlled plant would be above the existing standard. EPA has concluded that this justifies revising the standard.

Rationale

EPA's decision to amend the existing standard is based primarily on the results of the Sebree test program. The test results may be summarized as follows: (1) The measured emissions were variable, ranging from 0.43 to 1.37 kg/Mg (0.85 to 2.74 lb/ton) for single test runs; and (2) emission variability appeared to be inherent in the production process and beyond the control of plant personnel. Since the Sebree plant represents the latest technology for the aluminum industry, EPA expects that new plants covered by the standard may also exhibit emission variability.

An analysis performed by EPA on the results of the nine Sebree test runs indicates that there is about an 8-percent probability that a performance test would violate the current standard. (A performance test is defined in 40 CFR 60.8(f) as the arithmetic mean of three separate test runs, except in situations where a run must be discounted or canceled and the Administrator approves using the arithmetic mean of two runs.) The petitioners have estimated chances of violation ranging from about 2.5 to 10 percent. Although the Sebree data base is not large enought to permit a thorough statistical analysis, EPA believes it is adequate to demonstrate a need for revising the current standard.

EPA considered a number of possible solutions to the emission variability problem including raising the level of

the current standard, allowing a certain number of monthly tests to exceed the current standard based on an expected failure rate, and specifying an equipment standard in place of the current emission standard. These and other possible solutions were rejected because they did not satisfy the following criteria: The revised standard (1) must be enforceable, (2) must provide for the variability of emissions, and (3) must not allow emission levels to be higher than indicated by the Sebree plant, which employs the best system of emission reduction.

The solution EPA proposes is to amend Subpart S to allow a performance test to be above the current standard provided the owner or operator submits to EPA a report clearly demonstrating that the emission control system was properly operated and maintained during the excursion above the standard. The report would be used as evidence that the high emission level resulted from random and uncontrollable emission variability, and that the emission variability was entirely beyond the control of the owner or operator of the affected facility. Under no circumstances, however, would performance test results be allowed above 1.25 kg/Mg (2.5 lb/ton). EPA believes that emissions from a plant equipped with the proper control system which is properly operated and maintained would be below 1.25 kg/Mg at all times.

Within 15 days of receipt of the results of a performance test which fall between the current standard and 1.25 kg/Mg, the owner or operator of the affected facility would be required to submit a report to the Enforcement Division of the appropriate EPA Regional Office indicating that all necessary control devices were on-line and operating properly during the performance test, describing the operation and maintenance procedures followed, and setting forth any explanation for the excess emissions. EPA requests comments on additional criteria to be used by the Regional Offices to determing whether the control devices were properly operated and maintained during the performance test.

The proposed amendments would also require, following the initial performance test required under 40 CFR 60.8(a), additional performance testing at least once each month during the life of the affected facility. During visits to existing plants, EPA personnel have observed that the emission control systems are not always operated and maintained as well as possible. EPA believes that good operation and maintenance of control systems is essential and expects the monthly testing requirement to help achieve this goal. The Administrator has the authority under section 114 of the Clean Air Act to require additional testing if necessary.

It is important to emphasize that the following operating and maintenance procedures are exemplary of good control of emissions and should be implemented at all times: (1) Hood covers should fit properly and be in good repair; (2) if equipped with an adjustable air damper system, the hood exhaust rate for individual pots should be increased whenever hood covers are removed from a pot (the exhaust system should not be overloaded by placing too many pots on high exhaust); (3) hood covers should be replaced as soon as possible after each potroom operation; (4) dust entrainment should be minimized during materials handling operations and sweeping of the working aisles; (5) only tapping crucibles with functional aspirator air return systems (for returning gases under the collection hooding) should be used; and (6) the primary control system should be regularly inspected and properly maintained. EPA believes that the proposed amendments are clearly achievable provided the control system is properly designed and installed and, as a minimum, the six procedures noted above are emplemented.

The proposed amendments affect not only prebake designs, such as the Sebree plant, but also Soderberg plants. Available data for existing plants indicate that Soderberg and prebake plants have similar emission variability. Thus, EPA feels justified in extrapolating its conclusions about the Sebree prebake plant to cover Soderberg designs. It is unlikely that any new Soderberg plant will be built due to the high cost of emission control for these designs. However, existing Soderberg plants may be modified to such an extent that they would be subject to these regulations.

Under the proposed amendments anode bake plants would be subject to the monthly testing requirement, but emissions would not be allowed under any circumstances to be above the level of the current bake plant standard. Since there is no evidence that bake plant emissions are as variable as potroom emissions, there is no need to excuse excursions above the bake plant standard.

The proposed amendments would allow the owner or operator of a new plant to apply to the Administrator for an exemption from the monthly testing requirement for the primary control system and the anode bake plant. EPA believes that the testing of these systems as often as once each month may be unreasonable given that (1) The contribution of primary and bake plant emissions to the total emission rate is minor, averaging about 2.5 and 5 percent, respectively; (2) primary and bake plant emissions are much less variable than secondary emissions; and (3) the cost of primary and bake plant emissions sampling is high. An application to the Administrator for an exemption from monthly testing would be required to include (1) evidence that the primary and bake plant emissions have low variability; (2) an alternative testing schedule; and (3) a representative value for primary emissions to be used in total fluoride emission calculations.

EPA estimates the costs associated with monthly performance testing to average about $4,000 for primary tests, $5,000 for secondary tests, and $4,000 for bake plant tests. These estimates assume that (1) Testing would be performed by plant personnel; (2) each monthly performance test would consist of the average of 3 24-hour runs; (3) sampling would be performed by two crews working 13-hour shifts; (4) primary control system sampling would be performed at a single point in the stack; and (5) Sebree inhouse testing costs would be representative of average costs for other new plants. Although these assumptions may not hold for all situations, EPA believes they provide a representative estimate of what testing costs would be for new plants.

Also amended is the procedure for determining the rate of aluminum production. Previously, the rate was based on the weight of metal tapped during the test period. However, since the weight of metal tapped does not always equal the weight of metal produced, undertapping or overtapping during a test period would result in erroneous porduction rates. EPA believes it would be more reasonable to judge the weight of metal produced according to the average weight of metal tapped during a 30-day period (720 hours) prior to and including the test date. The 3-day period would allow for overtapping and undertapping to average out, and this would give a more accurate estimate of the true production rate.

Other amendments would (1) clarify the definition of potroom group to cover situations where two potroom segments are ducted to a common control system; (2) incorporate use of the International System of Units (SI); and (3) make minor editorial changes in the regulations.

Method 14

The proposed amendments to Reference Method 14 would update the test method to reflect EPA's experiences at the Sebree test program. Also, the amendments would make Method 14 consistent with recent revisions of Methods 1 through 8 (42 FR 41754). The intended effect of the proposed amendments is to clarify testing proce-

dures and to improve the reliability of the test method.

The principal amendments would be as follows: (1) More detailed anemometer specifications and calibration procedures would be delineated; (2) a performance check of each anemometer and each recorder (or counter) would be required following each test series (i.e., following each series of test runs as required for a performance test under 40 CFR 60.8(f)); (3) data adjustment procedures would be included for anemometers and recorders (or counters) that fail the performance check; (4) to be consistent with the new definition of "potroom group" more specific guidelines would be included for both the location of the sampling manifold and the number and location of the propeller anemometers; (5) for convenience, each Method 14 test run could be divided into "sub-runs"; (6) the use of a separate Method 13 train for each sub-run would be allowed, provided that the sampling nozzle size for all trains is the same; (7) a procedure would be included for calculating the fluoride concentration when more than one sampling train is used; (8) the tester would be allowed greater freedom as to the method by which velocity estimates are made for setting isokinetic flow; (9) the limits of acceptable isokinetic results would be more clearly defined, and a data adjustment procedure would be included for cases where the results are outside these limits; (10) the number and location of points for the Method 13 sampling runs would be determined according to the revised Method 1; (11) the use of a Type S pitot tube for making manifold intake nozzle adjustments would be disallowed; (12) the use of a differential pressure gauge conforming to the specifications of the revised Method 2 would be required for manifold intake nozzle velocity measurements; and (13) calibration of the thermocouple would be required after each test series, using the procedure outlined in the revised Method 2.

Due to the complexity of the amendments, the entire test method has been rewritten and is presented in revised form.

PUBLIC HEARING

A public hearing will be held to discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address above. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to Mr. Jack R. Farmer at the address above.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (address same as above).

MISCELLANEOUS

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The principal purposes of the docket are (1) to allow members of the public and industries involved to identify and participate in the rulemaking process, and (2) to serve as the record for judicial review. The docket is required under section 307(d) of the Clean Air Act, as amended, and is available for public inspection and copying at the address above.

The proposed amendments would not alter the applicability date of Subpart S. Subpart S applies to all new primary aluminum plants for which construction or modification began after the original proposal date (October 23, 1974).

As prescribed by section 111 of the Clean Air Act, promulgation of the original standard of performance (41 FR 3826) was preceded by the Administrator's determination that primary aluminum plants contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare. In accordance with section 117 of the act, publication of the original proposed standard (39 FR 37739) was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the revised test method.

It should be noted that standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> [T]he degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1).)

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the act requires (or has potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources located in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, section 173 of the act requires that a new or modified source constructed in an area which exceeds the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level which reflects the "lowest achievable emission rate" (LAER), as defined in section 171(3), for such category of source. The statute defines LAER as that rate of emissions which reflects:

> (A) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable or
>
> (B) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event can the emission rate exceed any applicable new source performance standard (section 171(3).)

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the act (Part C). These provisions require that certain sources (referred to in section 169(1)) employ "best available control technology" (as defined in section 169(3)) for all pollutants regulated under the act. Best available control technology (BACT) must be determined on a case-by-case basis, taking energy, environmental and economic impacts, and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 (or 112) of the act.

In all events, State implementation plans (SIP's) approved or promulgated under section 110 of the act must provide for the attainment and maintenance of National Ambient Air Quality Standards designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reductions than those required by standards of performance for new sources.

Finally, States are free under section 116 of the act to establish even more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. According-

ly, new sources may in some cases be subject to limitations more stringent than EPA's standards of performance under section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

The major costs incurred by the proposed amendments are associated with the periodic emission testing requirement. EPA believes that these costs are reasonable and would have a negligible impact on: (1) Potential inflationary or recessionary effects; (2) competition with respect to small business; (3) consumer costs; and (4) energy use. The Administrator has determined that the proposed amendments are not "substantial" and do not require preparation of an Economic Impact Assessment.

Dated: September 8, 1978.

DOUGLAS M. COSTLE,
Administrator.

It is proposed to amend Part 60 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart A—General Provisions

1. Section 60.8 is amended by revising paragraph (d) to read as follows:

§ 60.8 Performance tests.

* * * * *

(d) The owner or operator of an affected facility shall provide the Administrator 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have observers present.

* * * * *

Subpart S—Standards of Performance for Primary Aluminum Plants

2. Section 60.191 is amended by deleting paragraph (i) and by revising paragraphs (d) and (f) as follows:

§ 60.191 Definitions.

* * * * *

(d) "Potroom group" means an uncontrolled potroom, a potroom which is controlled individually, or a group of potrooms or potroom segments ducted to a common control system.

* * * * *

(f) "Aluminum equivalent" means an amount of aluminum which can be produced from a Mg of anodes produced by an anode bake plant as determined by § 60.195(g).

* * * * *

3. Section 60.192 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 60.192 Standards for fluorides.

(a) On and after the date on which the initial performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases containing total fluorides, as measured according to § 60.8, above:

(1) 1.0 kg/Mg (2.0 lb/ton) of aluminum produced for potroom groups at Soderberg plants; except that emissions between 1.0 kg/Mg and 1.25 kg/Mg (2.5 lb/ton) will be considered in compliance if the owner or operator demonstrates that exemplary operation and maintenance procedures were used with respect to the emission control system and that proper control equipment was operating at the affected facility during the performance test;

(2) 0.95 kg/Mg (1.9 lb/ton) of aluminum produced for potroom groups at prebake plants; except that emissions between 0.95 kg/Mg and 1.25 kg/Mg (2.5 lb/ton) will be considered in compliance if the owner or operator demonstrates that exemplary operation and maintenance procedures were used with respect to the emission control system and that proper control equipment was operating at the affected facility during the performance test; and

(3) 0.05 kg/Mg (0.1 lb/ton) of aluminum equivalent for anode bake plants.

(b) Within 15 days of receipt of the results of a performance test which fall between the 1.0 kg/Mg and 1.25 kg/Mg levels in paragraph (a)(1) of this section or between the 0.95 kg/Mg and 1.25 kg/Mg levels in paragraph (a)(2) of this section, the owner or operator shall submit a report indicating whether all necessary control devices were on-line and operating properly during the performance test, describing the operation and maintenance procedures followed, and setting forth any explanation for the excess emissions, to the Director of the Enforcement Division of the appropriate EPA Regional Office.

4. Section 60.195 is amended as follows:

(a) By redesignating paragraphs (a) through (g) as (c) through (i) respectively;

(b) By deleting in redesignated paragraphs (g)(1), (h), and (i) the words "metric ton" wherever they appear and inserting in their place "Mg;"

(c) By deleting "(a)" in redesignated paragraph (e) and inserting in its place "(c);"

(d) By deleting the word "tons" in redesignated paragraph (g)(3) and inserting in its place "Mg;"

(e) By deleting "§ 60.195(d)" in redesignated paragraph (h) and inserting in its place "§ 60.195(f);"

(f) Be deleting "§ 60.195(e)" in redesignated paragraph (i) and inserting in its place "§ 60.195(g);"

(g) By adding new paragraphs (a) and (b), and by revising redesignated paragraph (f) as follows:

§ 60.195 Test methods and procedures.

(a) Following the initial performance test as required under §60.8(a), an owner or operator shall conduct a performance test at least once each month during the life of the affected facility, except when malfunction prevent representative sampling, as provided under § 60.8(c). The owner or operator shall give the Administrator at least 7 days advance notice of each test. The Administrator may require additional testing under section 114 of the Clean Air Act.

(b) An owner or operator may petition the Administrator to establish an alternative testing requirement that requires testing less frequently than once each month for a primary control system or an anode bake plant. If the owner or operator shows that emissions from the primary control system or the anode bake plant have low variability during day-to-day operations, the Administrator may establish such an alternative testing requirement. The alternative testing requirement shall include a testing schedule and, in the case of a primary control system, the method to be used to determine primary control system emissions for the purpose of performance tests. The Administrator shall publish the alternative testing requirement in the FEDERAL REGISTER.

* * * * *

(f) The rate of aluminum production is determined by dividing 720 hours into the weight of aluminum tapped from the affected facility during a period of 30 days prior to and including the final run of a performance test.

* * * * *

(Sec. 111, 114, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7414, 7601(a)).)

APPENDIX A—REFERENCE METHODS

5. Method 14 is revised to read as follows:

14—DETERMINATION OF FLUORIDE EMISSIONS FROM POTROOM ROOF MONITORS OF PRIMARY ALUMINUM PLANTS

1. *Principle and applicability.*

1.1 *Principle*—Gaseous and particulate fluoride roof monitor emissions are drawn into a permanent sampling manifold

through several large nozzles. The sample is transported from the sampling manifold to ground level through a duct. The gas in the duct is sampled using Method 13A or 13B—Determination of Total Fluoride Emissions from Stationary Sources. Effluent velocity and volumetric flow rate are determined with anemometers permanently located in the roof monitor.

1.2 *Applicability*—This method is applicable for the determination of fluoride emissions from stationary sources only when specified by the test procedures for determining compliance with new source performance standards.

2. *Apparatus.*

2.1 *Velocity measurement apparatus.*

2.1.1 *Anemometers*—Propeller anemometers, or equivalent. Each anemometer shall meet the following specifications: (1) Its propeller shall be made of polystyrene, or similar material of uniform density. To insure uniformity of performance among propellers, it is desirable that all propellers be made from the same mold; (2) the propeller shall be properly balanced, to optimize performance; (3) when the anemometer is mounted horizontally, its threshold velocity shall not exceed 15 m/min (50 fpm); (4) the measurement range of the anemometer shall extend to at least 600 m/min (2,000 fpm); (5) the anemometer shall be able to withstand prolonged exposure to dusty and corrosive environments; one way of achieving this is to continuously purge the bearings of the anemometer with filtered air during operation; (6) all anemometer components shall be properly shielded or encased, such that the performance of the anemometer is uninfluenced by potroom magnetic field effects; (7) a known relationship shall exist between the electrical output signal from the anemometer generator and the propeller shaft rpm, at minimum of three rpm settings between 60 and 1800 rpm; note that one of the three rpm settings shall be within 25 percent of 60 rpm. Anemometers having other types of output signals (e.g., optical) may be used, subject to the appoval of the Administrator. If other types of anemometers are used, there must still be a known relationship (as described above) between output signal and shaft rpm; also, each anemometer must be equipped with a suitable readout system.

2.1.2 *Installation of anemometers*—2.1.2.1 If the affected facility consists of a single, isolated potroom (or potroom segment), install at least one anemometer for every 85 meters of roof monitor length. If the length of the roof monitor divided by 85 meters is not a whole number, round the fraction to the nearest whole number to determine the number of anemometers needed. For monitors that are less than 130 m in length, use at least two anemometers. Divide the monitor cross-section into as many equal areas as anemometers and locate an anemometer at the centroid of each equal area.

2.1.2.2 If the affected facility consists of two or more potrooms (or potroom segments) ducted to a common control device, install anemometers in each potroom (or segment) that contains a sampling manifold. Install at least one anemometer for every 85 meters of roof monitor length of the potroom (or segment). If the potroom (or segment) length divided by 85 is not a whole number, round the fraction to the nearest whole number to determine the number of anemometers needed. If the potroom (or segment) length is less than 130 m, use at least two anemometers. Divide the potroom (or segment) monitor cross-section into as many equal areas as anemometers and locate an anemometer at the centroid of each equal area.

2.1.2.3 At least one anemometer shall be installed in the immediate vicinity (i.e., within 10 m) of the center of the manifold (see § 2.2.1). Make a velocity traverse of the width of the roof monitor where an anemometer is to be placed. This traverse may be made with any suitable low velocity measuring device, and shall be made during normal process operating conditions. Install the anemometer at a point of average velocity along this traverse.

2.1.3 *Recorders*—Recorders, equipped with suitable auxiliary equipment (e.g. transducers) for converting the output signal from each anemometer to a continuous recording of air flow velocity, or to an integrated measure of volumetric flowrate. For the purpose of recording velocity, "continuous" shall mean one readout per 15-minute or shorter time interval. A constant amount of time shall elapse between readings. Volumetric flow rate may be determined by an electrical count of anemometer revolutions. The recorders or counters shall permit identification of the velocities or flowrate measured by each individual anemometer.

2.1.4 *Pitot tube*—Standard-type pitot tube, as described in § 2.7 of Method 2, and having a coefficient of 0.99 ± 0.01.

2.1.5 *Pitot tube (optional)*—Isolated, Type S pitot tube, as described in § 2.1 of Method 2. The pitot tube shall have a known coefficient, determined as outlined in § 4.1 of Method 2.

2.1.6 *Differential pressure gauge.*—Inclined manometer or equivalent, as described in § 2.2 of Method 2.

2.2 *Roof monitor air sampling system.*

2.2.1 *Sampling ductwork*—A minimum of one manifold system shall be installed for each 'potroom group' (as defined in Subpart S, § 60.191). The manifold system and connecting duct shall be permanently installed to draw an air sample from the roof monitor to ground level. A typical installation of duct for drawing a sample from a roof monitor to ground level is shown in figure 14-1. A plan of a manifold system that is located in a roof monitor is shown in figure 14-2. These drawings represent a typical installation for a generalized roof monitor. The dimensions on these figures may be altered slightly to make the manifold system fit into a particular roof monitor, but the general configuration shall be followed. There shall be eight nozzles, each having a diameter of 0.40 to 0.50 meters. Unless otherwise specified by the Administrator, the length of the manifold system from the first nozzle to the eighth shall be 35 meters or eight percent of the length of the potroom (or potroom segment) roof monitor, whichever is greater. The duct leading from the roof monitor manifold shall be round with a diameter of 0.30 to 0.40 meters. As shown in figure 14-2, each of the sample legs of the manifold shall have a device, such as a blast gate or valve, to enable adjustment of flow into each sample nozzle.

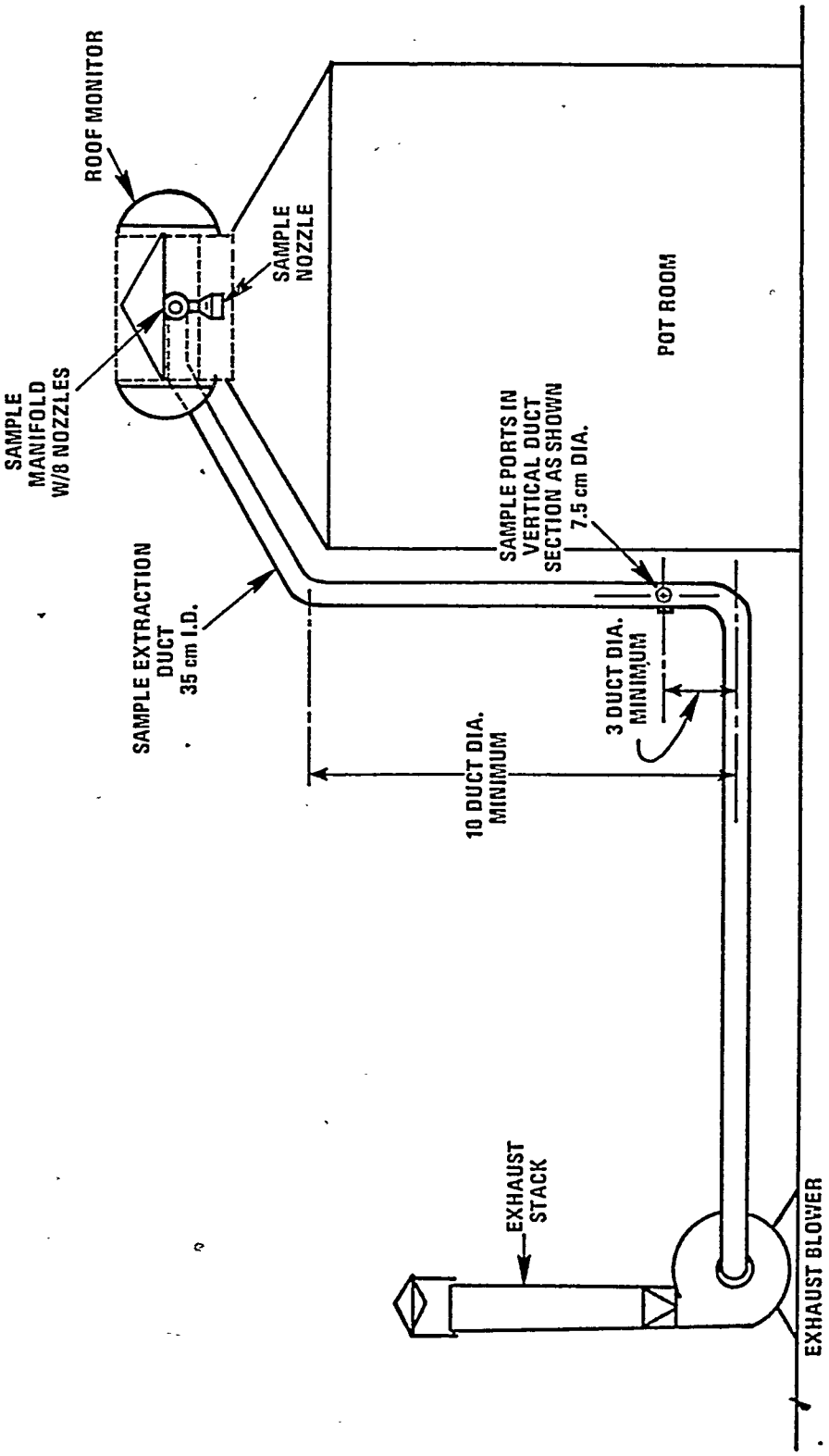

Figure 14-1. Roof monitor sampling system.

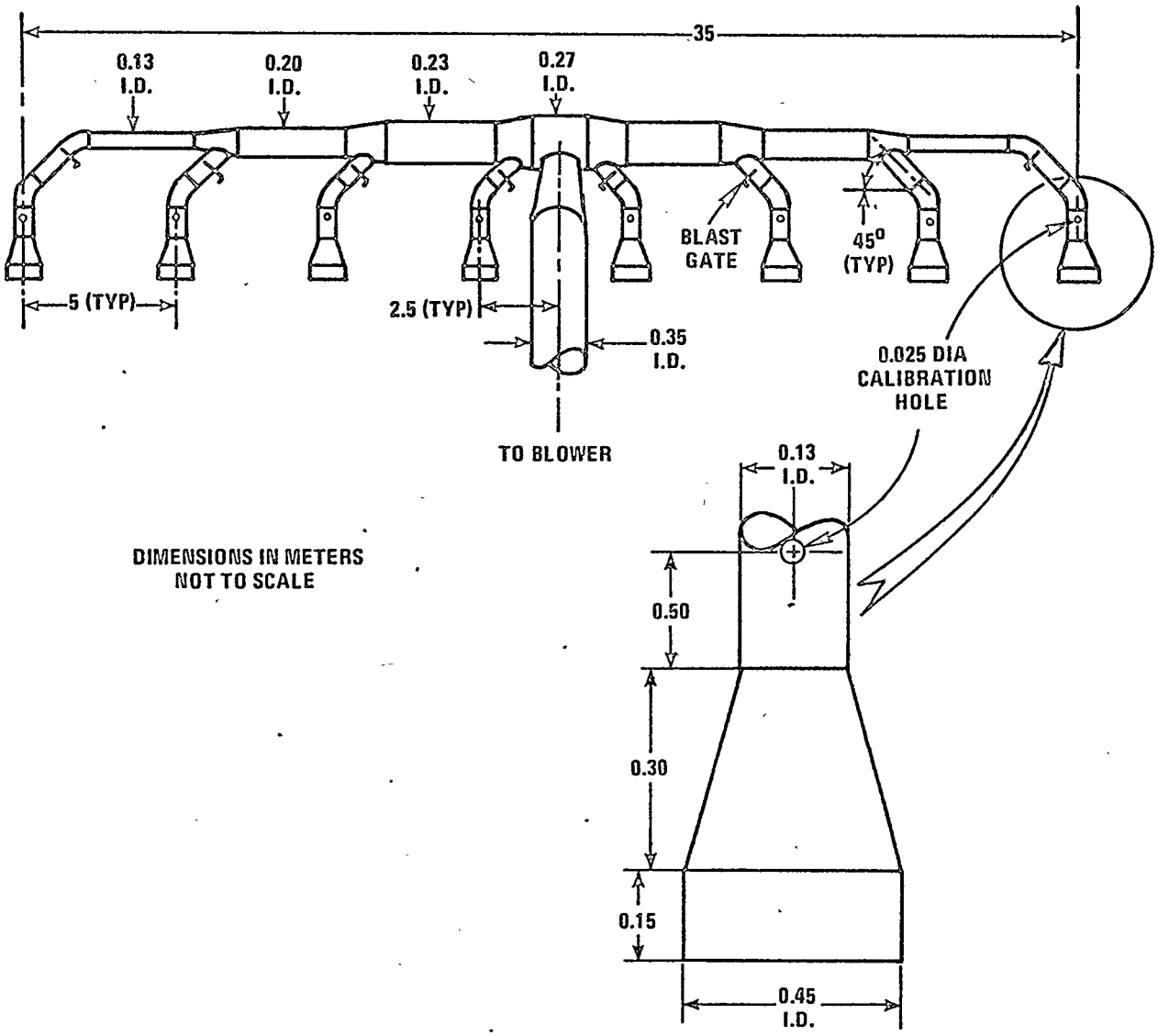

Figure 14-2. Sampling manifold and nozzles.

The manifold shall be located in the immediate vicinity of one of the propeller anemometers (see § 2.1.2.3) and as close as possible to the midsection of the potroom (or potroom segment). Avoid locating the manifold near the end of a potroom or in a section where the aluminum reduction pot arrangement is not typical of the rest of the potroom (or potroom segment). Center the sample nozzles in the throat of the roof monitor (see fig. 14-1). Construct all sample-exposed surfaces within the nozzles, manifold and sample duct of 316 stainless steel. Aluminum may be used if a new ductwork system is conditioned with fluoride-laden roof monitor air for a period of six weeks prior to initial testing. Other materials of construction may be used if it is demonstrated through comparative testing that there is no loss of fluorides in the system. All connections in the ductwork shall be leak free.

Locate two sample ports in a vertical section of the duct between the roof monitor and exhaust fan. The sample ports shall be at least 10 duct diameters downstream and three diameters upstream from any flow disturbance such as a bend or contraction. The two sample ports shall be situated 90° apart. One of the sample ports shall be situated so that the duct can be traversed in the plane of the nearest upstream duct bend.

2.2.2 *Exhaust fan*—An industrial fan or blower shall be attached to the sample duct at ground level (see fig. 14-1). This exhaust fan shall have a capacity such that a large enough volume of air can be pulled through the ductwork to maintain an isokinetic sampling rate in all the sample nozzles for all flow rates normally encountered in the roof monitor.

The exhaust fan volumetric flow rate shall be adjustable so that the roof monitor air can be drawn isokinetically into the sample nozzles. This control of flow may be achieved by a damper on the inlet to the exhauster or by any other workable method.

2.3 *Temperature measurement apparatus.* 2.3.1 *Thermocouple*—Install a thermocouple in the roof monitor near the sample duct. The thermocouple shall conform to the specifications outlined in § 2.3 of Method 2.

2.3.2 *Signal Transducer*—Transducer, to change the thermocouple voltage output to a temperature readout.

2.3.3 *Thermocouple Wire*—To reach from roof monitor to signal transducer and recorder.

2.3.4 *Recorder*—Suitable recorder to monitor the output from the thermocouple signal transducer.

2.4 *Sampling train*—Use the train described in Methods 13A and 13B.

3. *Reagents.*

3.1 *Sampling and analysis.* Use reagents described in Method 13A or 13B.

4. *Calibration.*

4.1 *Propeller anemometers.* 4.1.1 *Initial calibration*—Anemometers which meet the specifications outlined in § 2.1.1 need not be calibrated, provided that a reliable performance curve relating anemometer signal output to air velocity (covering the velocity range of interest) is available from the manufacturer. For the purposes of this method, a "reliable" performance curve is defined as one that has been derived from primary standard calibration data, with the anemometer mounted vertically. "Primary standard" data are obtainable by: (1) Direct calibration of one or more of the anemometers by the National Bureau of Standards (NBS); (2) NBS-traceable calibration; or (3) Calibration by direct measurement of fundamental parameters such as length and time (e.g., by moving the anemometers through still air at measured rates of speed, and recording the output signals). If a reliable performance curve is not available from the manufacturer, such a curve shall be generated, using one of the three methods described immediately above.

4.1.2 *Recalibration*—Extended field use of propeller anemometers can cause deterioration of some of the anemometer components, thus affecting performance. Therefore, a performance-check of each anemometer shall be made before (optional) and after (mandatory) each test series. The performance-check shall be done as outlined in § 4.1.2.1 through 4.1.2.3, below. Alternatively, the tester may use any other suitable method, subject to the approval of the Administrator, that takes into account the signal output, propeller condition and threshold velocity of the anemometer.

4.1.2.1 Check the signal output of the anemometer by using an accurate rpm generator (see fig. 14-3) or synchronous motors to spin the propeller shaft at each of the three rpm settings described in § 2.1.1 above (specification No. 7), and measuring the output signal at each setting. If, at each setting, the output signal is within ±5 percent of its original value, the anemometer can continue to be used. If the anemometer performance is unsatisfactory, the anemometer shall either be replaced or repaired.

4.1.2.2 Check the propeller condition, by visually inspecting the propeller, making note of any significant damage or warpage; damaged or deformed propellers shall be replaced.

4.1.2.3 Check the anemometer threshold velocity as follows: With the anemometer mounted as shown in figure 14-4(A), fasten a known weight (a straight-pin will suffice) to the anemometer propeller, at a fixed distance from the center of the propeller shaft. This will generate a known torque; for example, a 0.1 g weight, placed 10 cm from the center of the shaft, will generate a torque of 1.0 g-cm. If the known torque causes the propeller to rotate downward, approximately 90° (see fig. 14-4(B)), then the known torque is greater than or equal to the starting torque; if the propeller fails to rotate approximately 90°, the known torque is less than the starting torque. By trying different combinations of weight and distance, the starting torque of a particular anemometer can be satisfactorily estimated. Once an estimate of the starting torque has been obtained, the threshold velocity of the anemometer (for horizontal mounting) can be estimated from a graph such as figure 14-5. If the horizontal threshold velocity is acceptable [<16.7m/min (55 fpm), when this technique is used], the anemometer can continue to be used. If the threshold velocity of an anemometer is found to be unacceptably high, the anemometer shall either be replaced or repaired.

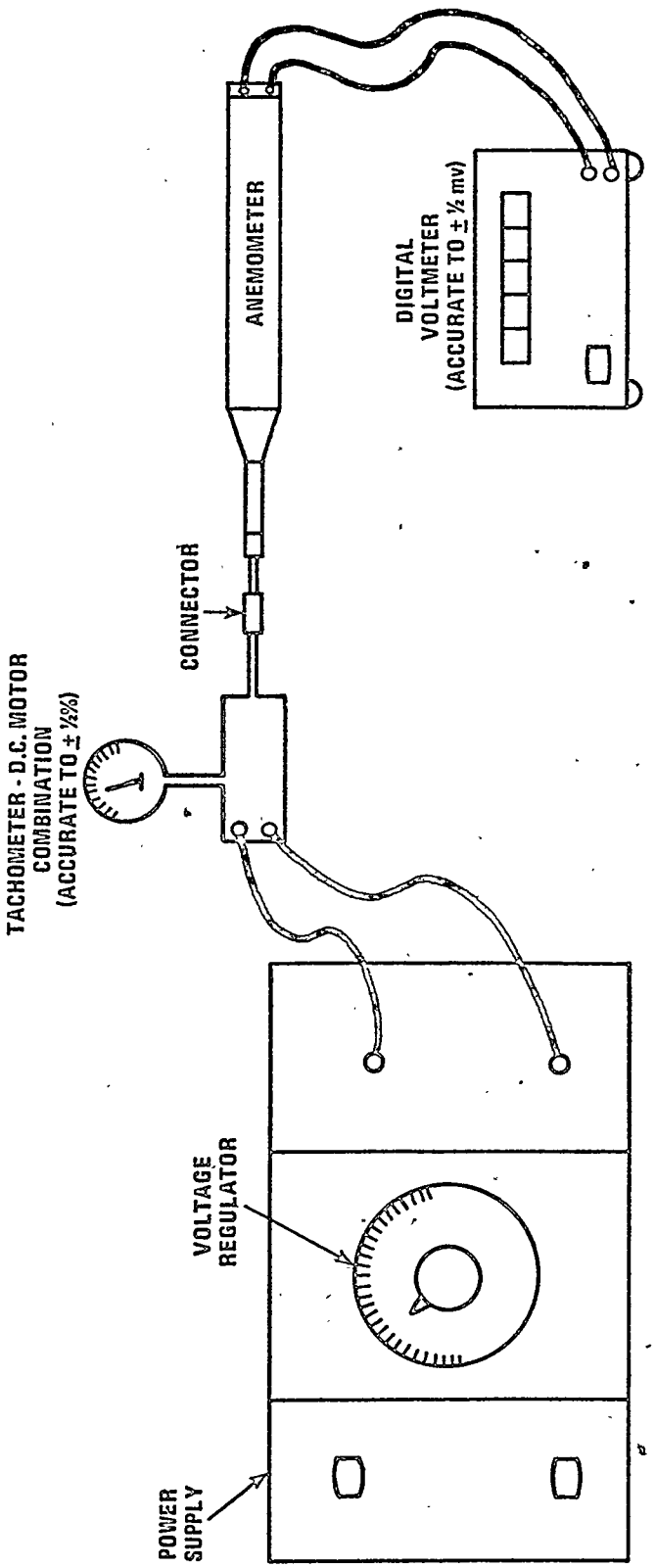

Figure 14-3. Typical RPM generator.

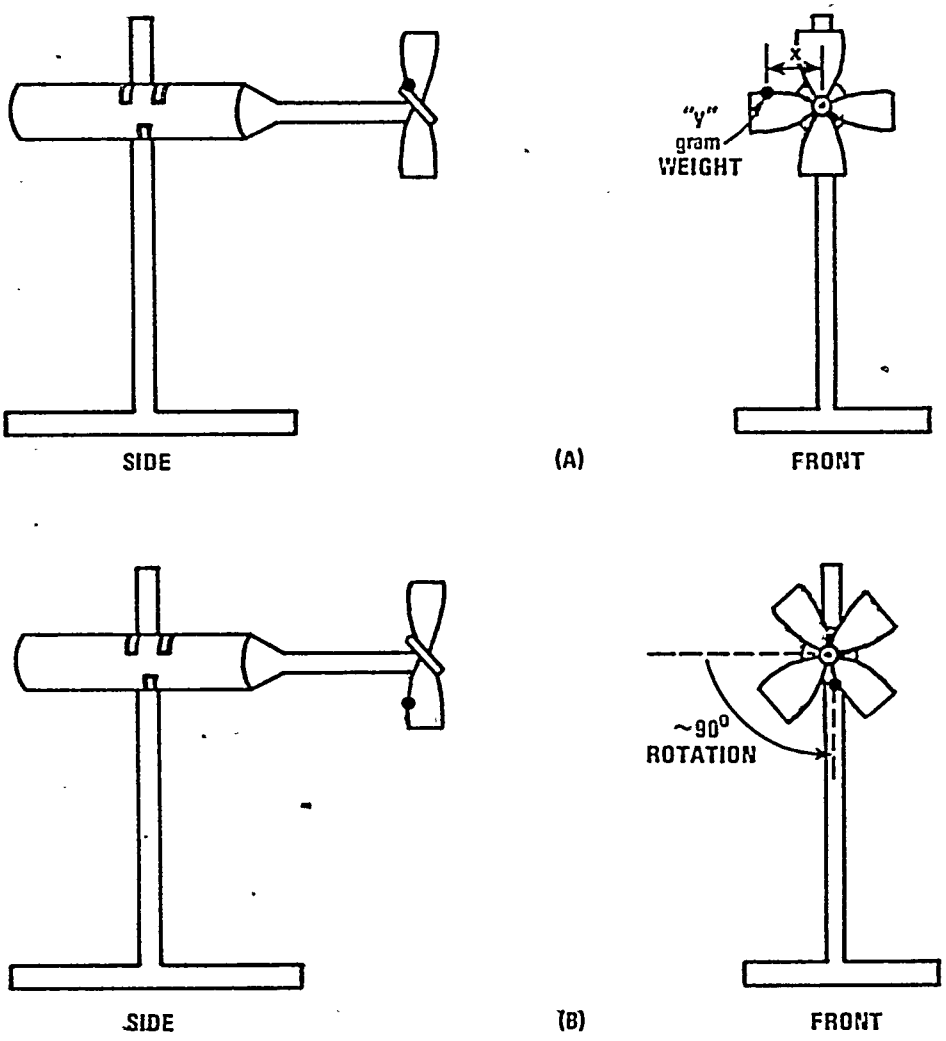

Figure 14-4. Check of anemometer starting torque. A "y" gram weight placed "x" centimeters from center of propeller shaft produces a torque of "xy" g-cm. The minimum torque which produces a 90° (approximately) rotation of the propeller is the "starting torque."

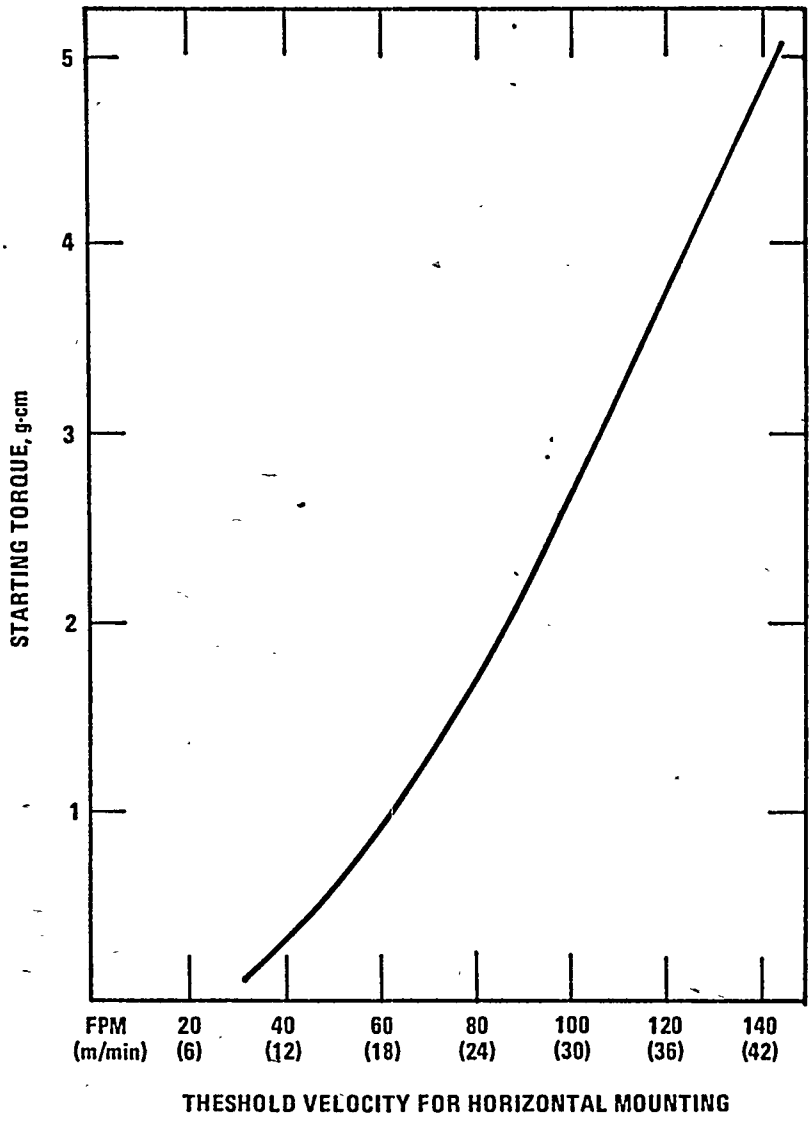

Figure 14-5. Typical curve of starting torque vs horizontal threshold velocity for propeller anemometers. Based on data obtained by R.M. Young Company, May, 1977.

4.1.2.4 If an anemometer fails the post-test performance-check (i.e., if repair or replacement of any anemometer components is necessary), proceed as follows: (1) Calibrate the anemometer (before repairing it), using one of the three methods described in section 4.1.1, above. Alternatively, the anemometer may be calibrated against another propeller anemometer that meets the specifications of section 2.1.1 (a detailed procedure is described in Citation 1 of section 7); (2) referring to the calibration curve obtained in step (1), recalculate (for each run) the average velocity (v) for the anemometer, using the data print-out obtained during the test series; (3) Compare each recalculated value of v against the reported value. If the recalculated value of v is less than the reported value, no adjustment in the reported overall average velocity for the run shall be made. If, however, the recalculated value of v exceeds the reported value, replace the reported value of v with the recalculated value, and then recompute the overall average velocity (and total flowrate).

NOTE.—If the anemometer located in the section of the roof monitor containing the sampling manifold fails the performance check, additional emission rate adjustments may be necessary (see section 6.1).

4.2 *Manifold Intake Nozzles.*—Adjust the exhaust fan to draw a volumetric flow rate (refer to equation 14-1) such that the entrance velocity into each manifold nozzle approximates the average effluent velocity in the roof monitor. Measure the velocity of the air entering each nozzle by inserting a standard pitot tube into a 2.5 cm or less diameter hole (see fig. 14-2) located in the manifold between each blast gate (or valve) and nozzle. Note that a standard pitot tube is used, rather than a type S, to eliminate possible velocity measurement errors due to cross-section blockage in the small (0.13 m diameter) manifold leg ducts. The pitot tube tip shall be positioned at the center of each manifold leg duct. Take care to insure that there is no leakage around the pitot tube, which could affect the indicated velocity in the manoifold leg. If the velocity of air being drawn into each nozzle is not the same, open or close each blast gate (or valve) until the velocity in each nozzle is the same. Fasten each blast gate (or valve) so that it will remain in this position and close the pitot port holes. This calibration shall be performed when the manifold system is installed.

NOTE.—It is recommended that this calibration be repeated at least once a year.

4.3 *Thermocouple.*—After each test series, the thermocouple shall be calibrated, using the procedures outlined in section 4.3 of method 2.

4.4 *Recorders and/or Counters.*—After each test series, check the calibration of each recorder and/or counter that was used (see section 2.1.3). Check the recorder or counter calibration at a minimum of three points, approximately spanning the range of velocities observed during the test series. use the calibration procedures recommended by the manufacturer, or other suitable procedures (subject to the approval of the Administrator). If a recorder or counter is found to be out of calibration, by an average amount greater than 5 percent for the three calibration points, proceed as follows: (1) Based on the results of the post-test calibration check, recalculate (for each run) the average velocity (v) for the anemometer that was connected to the recorder during the test series. If a particular recalculated value of v is less than the reported value, no adjustment in the reported overall average velocity for the run shall be made. If, however, the recalculated value of v is greater than the reported value, replace the reported value of v with the recalculated value, and recompute the overall average velocity (and total flowrate).

NOTE.—If the malfunctioning recorder or counter was connected to the anemometer in the section of the roof monitor containing the sampling manifold, additional emission rate adjustments may be necessary (see § 6.1).

5. *Procedure.*

5.1 *Roof Monitor Velocity Determination.* 5.1.1 *Velocity estimate(s) for setting isokinetic flow*—To assist in setting the flow in the manifold sample nozzles to isokinetic, the anticipated average velocity in the section of the roof monitor containing the sampling manifold shall be estimated prior to each test run. The tester may use any convenient means to make this estimate (e.g., the velocity indicated by the anemometer in the section of the roof monitor containing the sampling manifold may be continuously monitored during the 24-hour period prior to the test run.

If there is question as to whether a single estimate of average velocity is adequate for an entire test run (e.g., if velocities are anticipated to be significantly different during different potroom operations), the tester may opt to divide the test run into two or more "sub-runs," and to use a different estimated average velocity for each sub-run (see § 5.3.2.2).

5.1.2 *Velocity determination during a test run.*—During the actual test run, record the velocity or volumetric flowrate readings of each propeller anemometer in the roof monitor. readings shall be taken for each anmometer every 15 minutes or at shorter equal time intervals (or continuously).

5.2 *Temperature recording.* Record the temperature of the roof monitor every 2 hours during the test run.

5.3 *Sampling.* 5.3.1 *Preliminary air flow in duct.*—During the 24 hours preceding the test, turn on the exhaust fan and draw roof monitor air through the manifold duct to condition the ductwork. Adjust the fan to draw a volumetric flow through the duct such that the velocity of gas entering the manifold nozzles approximates the average velocity of the air exiting the roof monitor in the vicinity of the sampling manifold.

5.3.2 *Isokinetic sample rate adjustment(s)*—5.3.2.1 *Initial adjustment.*—Prior to the test run (or first sub-run, if applicable; see §§ 5.1.1 and 5.3.2.2), adjust the fan to provide the necessary volumetric flowrate in the sampling duct, so that air enters the manifold sample nozzles at a velocity equal to the appropriate estimated average velocity determined under § 5.1.1. Equation 14-1 gives the correct stream velocity needed in the duct at the sampling location, in order for sample gas to be drawn isokinetically into the manifold nozzles. Nest, verify that the correct average stream velocity has been achieved, by performing a pitot tube traverse of the sample duct (using either a standard or type S pitot tube); use the procedure outlined in method 2.

$$V_d = \frac{8\,(D_n)^2}{(D_d)^2}\,(V_m)\,\frac{1\ \text{minute}}{60\ \text{sec}} \qquad \text{(Equation 14-1)}$$

Where:

V_d=Desired velocity in duct at sampling location, meters/sec.

D_n=Diameter of a roof monitor manifold nozzle, meters.

D_d=Diameter of duct at sampling location, meters.

V_m=Average velocity of the air stream in the roof monitor, meters/minute, as determined under § 5.1.1.

5.3.2.2 *Adjustments during run.*—If the test run is divided into two or more "sub-runs" (see § 5.1.1), additional isokinetic rate adjustment(s) may become necessary during the run. Any such adjustment shall be made just before the start of a sub-run, using the procedure outlined in § 5.3.2.1 above.

NOTE.—Isokinetic rate adjustments are not permissible during a sub-run.

5.3.3 *Sample train operation.*—Sample the duct using the standard fluoride train and methods described in methods 13A and 13B. Determine the number and location of the sampling points in accordance with method 1. A single train shall be used for the entire sampling run. Alternatively, if two or more sub-runs are performed, a separate train may be used for each sub-run; note, however, that is this option is chosen, the area of the sampling nozzle shall be the same (±2 percent) for each train. If the test run is divided into sub-runs, a complete traverse of the duct shall be performed during each sub-run.

5.3.4 *Time per run.*—Each test run shall last 8 hours or more; if more than one run is to be performed, all runs shall be of approximately the same (±10 percent) length. If question exists as to the representativeness of an 8-hour test, a longer period may be selected. Conduct each run during a period when all normal operations are performed underneath the sampling manifold. During the test period, all pots in the potroom group shall be operated such that emissions are representative of normal operating conditions in the potroom group.

5.3.5 *Sample recovery.*—Use the sample recovery procedures described in method 13A or 13B.

5.4 *Analysis.*—Use the analysis procedures described in method 13A or 13B.

6. *Calculations.*

6.1 *Isokinetic sampling check.* 6.1.1 Calculate the mean velocity (V_m) for the sampling run, as measured by the anemometer in the section of the roof monitor containing the sampling manifold. If two or more sub-runs have been performed, the tester may opt to calculate the mean velocity for each sub-run.

6.1.2 Using equation 14-1, calculate the expected average velocity (V_d) in the sam-

pling duct, corresponding to each value of V_m obtained under § 6.1.1.

6.1.3 Calculate the actual average velocity (v_s) in the sampling duct for each run or sub-run, according to equation 2-9 of method 2, and using data obtained from method 13.

6.1.4 Express each value of v_s from § 6.1.3 as a percentage of the corresponding V_d value from § 6.1.2.

6.1.4.1 If v_s is less than or equal to 120 percent of V_d, the results are acceptable (note that in cases where the above calculations have been performed for each sub-run, the results are acceptable if the average percentage for all sub-runs is less than or equal to 120 percent)

6.1.4.2 If v_s is more than 120 percent of V_d, multiply the reported emission rate by the following factor:

$$1 + \frac{\frac{100\ v_s}{V_d} - 120}{200}$$

6.2 *Average velocity of roof monitor gases.* Calculate the average roof monitor velocity using all the velocity or volumetric flow readings from § 5.1.2.

6.3 *Roof monitor temperature.* Calculate the mean value of the temperatures recorded in § 5.2.

6.4 *Concentration of fluorides in roof monitor air (in mg F/m³).* 6.4.1 If a single sampling train was used throughout the run, calculate the average fluoride concentration for the roof monitor using equation 13A-5 of method 13A.

6.4.2 If two or more sampling trains were used (i.e., one per sub-run), calculate the average fluoride concentration for the run, as follows:

$$\bar{C}_s = \frac{\sum_{i=1}^{n} (F_t)_i}{\sum_{i=1}^{n} (V_{m(std)})_i} \qquad \text{(Equation 14-2)}$$

where:

C_s=Average fluoride concentration in roof monitor air, mg F/dscm.

$(F_t)_i$=Total fluoride mass collected during a particular sub-run, mg F (from equation 13A-4 of method 13A or equation 13B-1 of method 13B).

$(V_{m(std)})_i$=Total volume of sample gas passing through the dry gas meter during a particular sub-run, dscm (see equation 13A-1 of method 13A).

n=Total number of sub-runs.

6.5 Average volumetric flow from the roof monitor of the potroom(s) (or potroom segment(s)) containing the anemometers is given by equation 14-3.

$$Q_m = \frac{V_{mt}\ (A)\ (M_d)\ P_m\ (293°K)}{(T_m + 273°)\ (760\ mm\ Hg)} \qquad \text{(Equation 14-3)}$$

where:

Q_m=Average volumetric flow from roof monitor at standard conditions on a dry basis, m³/min.

A=Roof monitor open area, m².

V_{mt}=Average velocity of air in the roof monitor, meters/minute, from § 6.2.

P_m=Pressure in the roof monitor; equal to barometric pressure for this application, mm Hg.

T_m=Roof monitor temperature, °C, from § 6.3.

M_d=Mole fraction of dry gas, which is given by:

$$M_d = \frac{100 - 100(B_{ws})}{100}$$

NOTE.—B_{ws} is the proportion by volume of water vapor in the gas stream, from equation 13A-3, method 13A.

7. *Bibliography.* 1. A Simplified Procedure for Conducting Post-Test Calibration Checks of Propeller Anemometers. U.S. Environmental Protection Agency, Emission Measurement Branch. Research Triangle Park, N.C. July 1978.

2. Shigehara, R. T. A Guideline for Evaluating Compliance Test Results (Isokinetic Sampling Rate Criterion). U.S. Environmental Protection Agency, Emission Measurement Branch. Research Triangle Park, N.C. August 1977.

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TUESDAY, SEPTEMBER 19, 1978
PART VII

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

■

ANIMAL WELFARE ACT

Proposed Standards and Regulations for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals

Federal Register

[3410-34]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Parts 1 and 3]

ANIMAL WELFARE ACT

Proposed Standards and Regulations for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals

AGENCY: Animal and Plant Health Inspection Service (USDA).

ACTION: Proposed rule.

SUMMARY: This document proposes regulations and standards under the Animal Welfare Act which would remove warmblooded aquatic animals or marine mammals from the list of species of warmblooded animals exempted by regulation and would bring them under the jurisdiction and protection of the Animal Welfare Act. The Marine Mammal Commission has recommended that the Secretary of Agriculture adopt certain standards under the Animal Welfare Act to govern the humane handling, care, treatment, and transportation of marine mammals. Regulations and standards were first proposed and published in the FEDERAL REGISTER on August 19, 1977. Comments and recommendations were received from the public and the Marine Mammal Commission. This Department has evaluated the comments and recommendations and has decided to modify the proposal of August 19, 1977, and to republish it as a proposed amendment to the regulations and standards under the Animal Welfare Act to govern the humane handling, care, treatment, and transportation of marine mammals.

DATE: Comments on or before November 20, 1978.

ADDRESSES: Comments to Deputy Administrator, USDA, APHIS, VS, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782. Comments are available for inspection at the above address during regular hours of business (8 a.m. to 4:30 p.m. Monday through Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, telephone number 301-436-8271.

SUPPLEMENTARY INFORMATION: On August 19, 1977, the Animal and Plant Health Inspection Service (APHIS) published a proposed rulemaking under the Animal Welfare Act (42 FR 42044) which proposed standards and regulations for the humane handling, care, treatment, and transportation of marine mammals when maintained in captivity. This proposed rulemaking would amend Parts 1 and 3, Subchapter A, Chapter I, of the Code of Federal Regulations. The Animal Welfare Act, as amended (7 U.S.C. 2131 et seq.), requires the Secretary to promulgate regulations and to set standards governing the humane handling, care, treatment, and transportation of animals by dealers, research facilities, exhibitors, and operators of auction sales. Such standards must include such specific areas as (1) handling, (2) housing, (3) feeding, (4) watering, (5) sanitation, (6) ventilation, (7) transportation, (8) shelter from extremes of temperature, (9) adequate veterinary care, and (10) separation of species, to provide the animals with the minimum essentials to maintain them in a state of good health.

Following publication of the proposed rulemaking on August 19, 1977 (42 FR 42044), a 60-day period was designated for the purpose of inviting public comment. During the comment period, three informal public hearings were held at different locations within the United States to provide the public the opportunity to voice its opinion regarding the proposed rulemaking. A notice regarding two of these meetings was announced in the FEDERAL REGISTER on September 13, 1977 (42 FR 45934). The first meeting was held on September 26, 1977, in Los Angeles, Calif., and the second in Miami Springs, Fla. on September 29, 1977. A third meeting was announced in the FEDERAL REGISTER on October 4, 1977 (42 FR 53968). It was held in College Park, Md., on October 18, 1977. The proceedings of all three meetings were recorded, and all the discussions and comments are a matter of public record. Written comments were also received during the comment period and are on file and available to the public.

At the end of the comment period there were 49 letters and written statements received with regard to the proposed rulemaking. In summary, the comments from the private sector of the public, including individuals who apparently do not have any direct interest in marine mammals consist of the following: One was opposed to APHIS' proposals as being much too lenient; there were 14 which generally agreed with the proposals and suggested that a few areas be strengthened, and there was one which agreed but indicated that extensive changes should be made. Comments from the various animal welfare groups consisted of one which was opposed to all the proposed standards as being too mild, and four which agreed with the standards as written. Most comments came from the industry such as zoos, circuses, universities, research facilities, and others who will be primarily affected by the new requirements. None of these agreed with the proposal as written. There were two which opposed any form of regulation over marine mammals. Fourteen agreed with the basic concept of the proposal but strongly urged modifications. The Marine Mammal Commission supported the basic concept of the proposal but noted that the provisions of the proposed regulations were not consistent with those it had recommended to the Department in 1975. It recommended that the Department modify the provisions to make them consistent with its recommendations. In order to more fully discuss such recommendations, the representatives of the Commission requested a meeting with the Department prior to publication of this proposal. Such a meeting was held on July 20 and 21, 1978, in Departmental offices of USDA.

The various comments that were received with regard to the proposed rulemaking and the recommendations of the Marine Mammal Commission were evaluated by this Department, and it was determined that several areas needed extensive revision. Therefore, the Department has decided to redraft the original proposal and to republish the regulations and standards as a proposed rulemaking.

Notice is hereby given in accordance with the administrative provisions in 5 U.S.C. 553, that, pursuant to the provisions of the Animal Welfare Act (7 U.S.C. 2131 et seq.), the Department of Agriculture is proposing (1) to amend the regulations under the Act (9 CFR 1.1) to revise the definition of "animal" to include marine mammals, to add the term "pool" to the definition of "primary enclosure", and to define the term "minimum horizontal dimension"; and (2) to provide new standards (9 CFR 3.1 et seq.) regarding the humane handling, care, treatment, and transportation of marine mammals.

These proposed standards and regulations would apply for the humane handling, care, and treatment of all marine mammals maintained in captivity. All facilities which house marine mammals in captivity would be required to comply with the proposed standards and regulations unless they are granted written permission by the Secretary to maintain a facility which does not meet every requirement of the standards and regulations. Such

permission would only be granted upon written application and upon the submission of all the information requested by the Secretary regarding the facility seeking such permission.

It is proposed herein that facilities housing marine mammals be allowed to obtain such permission to operate under license even though they may not be in full compliance with the standards for two reasons. The first of these is that there may be existing facilities containing healthy and well kept marine mammals, which do not meet the proposed requirements in every respect. The area of marine mammal care is relatively new to the Department and some of the requirements of the standards may go substantially beyond the requirements of the Animal Welfare Act, i.e., minimum standards for the humane handling, care, and treatment of marine mammals. It would therefore be unfair for the Department to demand that such facilities immediately comply with every standard or face administrative or criminal action for failure to do so. During the time period in which deviation from the requirements would be allowed (a maximum period is 4 years from the effective date of the regulations and standards), the Department would have an opportunity to further research the various aspects of marine mammal care, and to amend the requirements when deemed appropriate. The second reason for proposing to allow permission for deviation from the standards is a purely economic and practical one. If a facility needs to make extensive structural changes to come into full compliance, it may need enough time to be able to accomplish this task since renovation or new construction could entail a great amount of money as well as time. An exemption to deviate from the standards would also be granted by the Secretary in cases where a facility wishes to experiment in the area of maintaining marine mammals in captivity.

A request for permission to operate a facility that deviates from the proposed standards, or a facility which requests a temporary exemption to experiment with basic husbandry practices of maintaining marine mammals in captivity, would not be considered a right. The Secretary could deny such requests if he determines that granting them would be harmful or detrimental to the good health and well-being of the marine mammal involved.

The standards and regulations would become effective 90 days after publication as a final rulemaking in the FEDERAL REGISTER. It is proposed herein that within that 90-day period all facilities housing marine mammals be required to apply to the Deputy Administrator of APHIS to have their marine mammal facilities inspected by Department inspectors. A facility already licensed by the Department as an exhibitor or as a research facility having marine mammal housing areas which are in compliance with the Act would need no further license. Facilities not licensed by the Department would be issued a license provided they were in compliance with all the standards and regulations.

Any facility not totally in compliance at the time of the inspection would have the opportunity to obtain permission from the Secretary to operate as a licensee under the Act. Such permission would be in writing and all existing deficiencies would be listed thereon. A timetable would be required to be submitted to the Secretary, by the applicant, for correction of such deficiencies: *Provided, however,* That any facility having such serious deficiencies that the good health and well-being of the marine mammals contained therein are in jeopardy, would be required to immediately correct such deficiencies. A maximum of 4 years from the effective date of these standards and regulations would be granted for extensive new or renovative construction to bring the facility into total compliance with the Act. A determination would have to be made by representatives of the Secretary at the time of the first inspection, as to the priorities of correcting the deficiencies.

On evaluating the comments received, there appears to be some confusion under what authority this Department is proposing these regulations and standards. There is also some question regarding the duplication of authority of other Government departments or agencies in regulating marine mammals. The authority to promulgate the regulations and to set standards for the humane handling, care, treatment, and transportation of captive marine mammals by dealers, research facilities, exhibitors, and operators of auction sales was given to the Secretary of Agriculture by the 1970 Amendments to the Animal Welfare Act (Pub. L. 91-579). Such authority was extended to cover carriers and intermediate handlers by the Animal Welfare Act Amendments of 1976 (Pub. L. 94-279). The Secretary temporarily exempted warmblooded aquatic animals or marine mammals by regulation and is now prepared to remove them from exemption.

Under provisions of the Marine Mammal Protection Act of 1972) Pub. L. 92-522), the administrative responsibility for regulating marine mammals in the wild, and those removed from the wild and held in captivity after the effective date of the Act, was given by Congress to the Departments of Commerce and the Interior. Those Departments have prescribed the regulations that apply to such animals. Such authority is exercised through a permit system whereby permits to obtain new marine mammals or replacements from the wild are issued, provided that the applicants for such permits comply with provisions of these permits with respect to the handling and care of the animals. The authority of the Department of Agriculture extends to marine mammals held in captivity regardless of when they were taken. There appears to be some overlap and duplication of effort between the two Acts, but in fact, they dovetail very nicely and each agency has its own area of responsibility. The Departments of Commerce and the Interior have indicated their interest to enter into an agreement with USDA for purposes of regulating the maintenance in captivity of marine mammals that would otherwise be subject to their jurisdiction and regulations when these proposed regulations and standards become effective.

The Marine Mammal Commission, created by the Marine Mammal Protection Act of 1972, was given the responsibility of studying and recommending to the Secretaries of Commerce and the Interior, and to other Federal officials, such steps as it deems necessary or desirable for the protection and conservation of marine mammals. It has recommended that the Secretary of Agriculture remove marine mammals from the list of species exempted by regulation from coverage under the Animal Welfare Act and adopt certain standards and regulations for their humane handling, care, treatment, and transportation. Such recommendation and supporting technical data have been used as the basis for proposing these proposed amendments to the regulations and standards under the Animal Welfare Act. Prior to obtaining this data and other information regarding marine mammals, this Department did not have sufficient information on which it could base such regulations and standards.

In developing the proposed standards, this Department relied on information and recommendations from many sources, including the Marine Mammal Commission, and also added numerous paragraphs so that the proposed standards would conform to the present standards which apply to all other warmblooded species covered by the Animal Welfare Act. This is especially true with respect to the transportation standards which are required by the 1976 Amendments to the Animal Welfare Act and which would apply to common carriers and intermediate handlers.

The proposed regulations and standards apply to several orders and many species of marine mammals which

have significant differences with respect to their biological and behavioral requirements. In all cases, the goal of the proposed regulations and standards is to provide each individual marine mammal with at least minimum acceptable conditions consistent with its good health and well-being, in reference to its physical requirements and behavioral characteristics. It should be understood, however, that the Department is still developing new information regarding the proper procedure for maintaining marine mammals in captivity and that the standards and regulations proposed herein may, in some instances, be more or less than the minimum required. As new information regarding marine mammals is acquired, the Department expects to amend the standards and regulations accordingly.

Standards relating to the humane handling, care, treatment, and transportation of animals currently covered by the Animal Welfare Act are contained in 9 CFR part 3, subparts A, B, C, D, and E. The individual subparts are oriented to similar kinds or classes of animals and have many sections which are equally applicable to the humane handling, care, and treatment of all animals. It is proposed that subpart E of the standards be redesignated as subpart F and be renumbered accordingly, and that a new subpart E be added to the standards containing the minimum standards for marine mammals.

Discussion of Comments

Comments regarding facilities, health, and husbandry

There were several comments received stating that the proposed requirement, "that the surfaces within the primary enclosure pool and the area immediately surrounding the pool should provide a nonporous, waterproof finish, free of cracks or imperfect junctures," was impossible. The Department does not intend to say that cracks and imperfect junctures would not occur, but if cracks appeared or if there were settling or upheavals, then these would be required to be repaired as part of a regular ongoing maintenance program. Furthermore, it would be expected that an effort would be made to avoid or minimize such imperfections during construction. Broken cement is unsightly and indicates neglect, as well as being a health hazard to the animals, as it is difficult if not impossible to clean properly.

With regard to primary enclosures in general, the Marine Mammal Commission pointed out that in the original proposal there were no provisions for facilities commonly found in coastal areas which house marine mammals in tidal basins, bays, and estuaries. This type of primary enclosure would usually consist of a natural inlet which is fenced to house marine mammals. The water in such an enclosure is circulated naturally by tidal action or currents.

It is the determination of this Department that this type of primary enclosure would be required to meet or exceed the proposed standards and regulations with regard to the minimum space requirements of both the pool and resting areas, depth of the water (at the lowest tide), and the applicable sanitation regulations. Very little construction is actually done in a natural primary enclosure pool other than the fence. Therefore, it is proposed herein that such pools be exempt from the surface, construction, and drainage requirements proposed herein. However, the support facilities surrounding the primary enclosure would be required to meet or exceed all the proposed standards and regulations, and the fence and the enclosure itself would be required to meet the standards with respect to protection of the marine mammals from injury.

Facilities constructed near a source of natural water, and using the water for pool water in the primary enclosure, would be required to meet or exceed all parts of the proposed standards and regulations. Water quality would be required to be monitored and the discharge of the drainage effluent would be required to meet local, State, and Federal requirements for waste disposal.

Modern day pollution of natural waterways is a real problem, and facilities utilizing natural water would have to continually monitor the water quality to assure the water used in the primary enclosure pool is not harmful or detrimental to the good health and well-being of the marine mammals housed therein.

It is proposed that the area immediately surrounding the pool, especially in primary enclosures for pinnipeds, can be any surface such as rocks, sand, dirt, etc., as long as it can be properly cleaned.

One comment stated that the proposal would require a sterile exhibit and that no provisions for any "decorations" or "furniture" were made. This was not the intent of the regulations. Rocks, logs, or any other objects would be allowed to be placed in the enclosure for decoration or for the comfort or entertainment of the marine mammals, as long as such objects could be cleaned on a daily basis along with the rest of the interior of the enclosure. These objects would not be allowed to occupy space in the enclosure which is necessary to meet the minimum resting and social activity requirements of the animals.

Another comment regarding the original proposal consisted of a request for the deletion of part of a sentence, i.e., "to restrict the entrance of other animals" (§ 3.100(a)(1)), when describing the general construction requirements for primary enclosures, because in natural enclosures that are located in tidal basins or near bays and estuaries, small fish swim in and out of the enclosures. The Department does not intend to restrict the desirable or unobjectionable animals, such as small fish, gulls, or other birds, from entering the enclosure but intends to prevent the entrance of unwanted animals. This clarification is therefore reflected in this proposal.

There were several comments that the first proposal did not allow for public feeding or for petting pools whereby the public is allowed to actually touch the captive marine mammals. The proposed regulations did not prohibit public feeding or petting pools but stated that in the event there were no effective physical barriers to keep the public from injuring the animals or the animals from injuring the public, then close or constant supervision must be maintained at all times when there would be marine mammal/public contact. This means an employee or attendant would need to be physically present to exercise such supervision at the exhibit during the contact period.

There were numerous comments that emergency backup equipment at facilities would be expensive and unnecessary to provide for the animals in case of failure of the primary source. It was not intended that both power and water sources be present at all times on the premises. The regulation as proposed would allow for portable powerplants to be brought in for emergency use. Water could be hauled in, or any method could be used to bring in water for swimming, drinking, or cleaning purposes as long as the animals were not caused to suffer because of the failure. Although the power and water failure would not present an immediate problem to the animals, it would be very difficult to maintain water quality and provide for proper cleaning if the failure lasted for an extended period. Therefore, it is proposed herein that written contingency plans be provided to the Department for approval concerning supplying power and water in the event of an emergency failure of the primary sources. The plan must be capable of being implemented before the health and well-being of the marine mammal is jeopardized.

With regard to drainage, the former proposal stated that not only must proper drainage be present at the primary enclosure pool but also at the resting and social activity areas imme-

diately around the pool in order to allow for complete drainage which would facilitate thorough cleaning. Furthermore, that proposal stated that the area immediately around the pool be sloped or graded toward drains to prevent soiled or contaminated water from reentering the pool. It was also proposed that all water, whether splashed from the pool, rainwater, or water used for cleaning purposes, should drain away from the pool and be disposed of in a manner that complies with all applicable State, Federal, and local antipollution laws.

Several comments were received regarding these proposed requirement, some stating that there are many well-operated facilities in which all drainage slopes toward the pool, this being especially true in closed systems that continually recirculate saltwater. Most localities prohibit the discharge of saltwater into public drainage systems as a violation of the antipollution laws. Therefore, all saltwater must be recovered for recirculation. Facilities with this type of drainage must have extremely efficient filtration systems with fast turnover or recirculation rates in order to maintain proper water quality standards. After giving these factors due consideration, the Department proposes to relax the proposed drainage requirements to allow the drainage to reenter the pool provided that proper water quality can be maintained.

There were several comments received with regard to the proposed requirements for indoor housing of marine mammals. Most of the comments concerned the ambient air and water temperatures in such housing. Eleven of the comments were of the opinion that the proposed temperature ranges were unnecessary. After due consideration of the comments received, the Department has determined not to impose the temperature ranges, as previously proposed. The reason for this decision is due to the number of adverse comments received stating that certain species of marine mammals cannot tolerate the upper proposed temperature range and other species cannot tolerate the lower proposed temperature range, and that even experts in the field do not agree that an optimum temperature can be found for all marine mammals.

Since the maximum and minimum acceptable temperatures for every known species of marine mammal have not been documented by scientific research, they are not available to the Department whereby they can be incorporated into the standards and regulation for each species. Nevertheless, this Department realizes that maintaining appropriate ambient air and water temperatures is vital to the good health and well-being of marine mammals. Therefore, although no specific temperature range is required by this proposal, it is proposed herein that the air and water temperatures in indoor facilities shall be sufficiently regulated by heating or cooling to protect the marine mammals from extremes of temperature, to provide for their good health and well-being and to prevent their discomfort, in accordance with currently accepted practices as cited in appropriate professional journals or reference guides depending entirely upon the species housed therein.

Marine mammals are air breathing animals and proper ventilation is very important to assure that they are provided an adequate quantity of air of good quality.

There were two comments that the proposed air space of 2.44 meters (8 feet) over the pools of water was excessive and that there could be less air space, provided that the flow of air in such space was increased. The technical and scientific advisers to the Department agree that the average minimum height requirement over the pool could be lowered to 1.83 meters (6 feet) if the air movement is such that it satisfies all minimum standards for ventilation. It is therefore proposed herein that the space over pools be not less than an average of 1.83 meters (6 feet) from the level of the water in the pool to the ceiling and that ventilation of indoor housing facilities be adequate to provide a flow of fresh air for the marine mammals.

The proposed standards regarding lighting in indoor facilities remain unchanged in this proposal. It is proposed herein that indoor facilities for marine mammals must have sufficient light provided by natural or artificial means so that animal caretakers can observe the marine mammals both in and out of the primary enclosure pool of water to detemine their general health and condition and so that they can observe and maintian good sanitary conditions. Lighting must also be sufficient in distribution and intensity for adequate inspection purposes. It also appears that lighting in indoor facilities is necessary to simulate the approximate lighting conditions existing in nature, allowing for certain periods of darkness and daylight.

The major comments concerning outdoor facilities were with regard to the amonut of ice in pools, shade from excessive sunlight, and shelter from inclement weather. Ten comments were received with regard to allowing ice in the pool for some species of marine mammals and not for others, twelve comments stated that there is no need to provide shade, and three comments stated that there is no need to provide shelter from inclement weather.

As was stated in the previous proposal, marine mammals come from a great variety of climatic conditions, from equatorial waters to the polar ice caps. There is also a great range of climatic conditions within the United States. Outdoor facilities are completely dependent upon local environmental conditions. Marine mammals have adapted to the most hostile environments in the world, and their natural habitats are very stark with little, if any, protection from adverse weather conditions. If their environment becomes too undesirable, the marine mammal can escape to the sea or migrate to more suitable environmental living conditions. Captive marine mammals have no such natural escape route available to them. Therefore, artificial protection must be provided for use by the marine mammal in captivity when the need to do so arises. The protection is especially important in the case of marine mammals which, because of their age, illness, or any other debilitating condition, cannot adequately regulate their body temperature. For these reasons, the Department intends to continue to require that some sort of shelter be provided when necessary to protect the animals from either the sun or from inclement weather. Outdoor facilities would be required to be designed in a manner which would allow marine mammals contained therein to adapt to the variations of climatic conditions which exist in the geographical area where they are kept. If the local climatic conditions of the outdoor facility vary form the conditions in which they were previously housed, the marine mammals will have to be acclimated to their new environment before being placed in such outdoor housing facilities.

Originally, it was proposed that water in pools in primary enclosures be kept free of ice. Pools in outdoor facilities which are covered with ice can deny marine mammals access for exercise, drinking, body temperature regulation, or can obstruct their free access to the surface to obtain sufficient air for normal breathing. However, after considering various factors and after consulting with the Marine Mammal Commission, this Department has decided to modify the original proposal. It is therefore proposed that pools of water in outdoor facilities for cetaceans and sea otters be kept free of ice. It is further proposed that outdoor pools in polar bear and ice dwelling pinniped enclosures shall be kept sufficiently free of solid ice so as to not interfere with free access to the pool by the animals by preventing their entry or exit from the pool. It is also proposed that sirenians and warm water dwelling pinnipeds shall not be house in pools where water tempera-

ture cannot be maintained within the temperature range to meet their needs.

The Marine Mammal Commission has recommended that no marine mammal should be maintained alone. The Commission makes this recommendation because most marine mammals are gregarious and do not easily adapt to isolation. It may be desirable to keep several individuals of a species for more normal socialization, breeding, and for establishing normal species specific behavioral patterns. But it is the opinion of the Department that the imposition of such a requirement would be unnecessarily restrictive. This Department has no authority over the permit system of obtaining new or replacement marine mammals. The Department cannot prosecute a licensee for having a single marine mammal if other government agencies do not issue permits to obtain additional marine mammals. However, in order to encourage keeping more than one marine mammal in an enclosure, the Department has made the proposed minimum space requirements for marine mammals, with the exception of pinnipeds and polar bears, sufficiently large to hold at least two animals.

Many comments were received with regard to the proposed space requirements. Some of the general comments were that marine mammal space requirements should not be lumped together but should be determined for each individual species. Some suggested that the Department should also consider the purpose of the housing, such as training, research, isolation, performing arenas,and other functions when setting space requirements. Others felt there should be considerable space for exercise. All the comments were considered, and it is the opinion of the Department that most were valid. The problem is presented of proposing minimum space requirements under which marine mammals can be housed, while taking into consideration their good health and well-being. Many experts and humane organizations feel that more than the minimum should be provided, but the Animal Welfare Act speaks in terms on minimum requirements. Therefore, only the essential factors must be considered to assure that handling, care, treatment, and means of transportation are adequate to maintain the marine mammal in a state of good health.

Space requirements for the wide range of marine mammals are quite variable. The Marine Mammal Commission, in its advisory capacity to all agencies of the Federal Government with regard to marine mammals, has furnished this Department with its recommendations from information that has been collected by its scientific advisory committee and which has been used as a basis for the proposed space requirements for marine mammals. Such information appears to provide an adequate basis for setting space requirements which would be sufficient to assure the good health and well-being of captive marine mammals.

Regarding the comments advising different space requirements for different species, it should be noted that there are more than 100 species of marine mammals, and valid scientific data regarding the minimum requirements is not available regarding every species. Therefore, the Department has no choice other than "lumping" species of marine mammals together. However, consideration was given to the different orders of marine mammals.

The Marine Mammal Commission has specifically recommended that the order Cetacea (whales, dolphins, porpoises) be divided into two groups. This recommendation is, therefore, being adopted in this proposal. The Marine Mammal Commission's justification for such division is based upon the activity patterns of certain species of cetaceans, requiring more space for the more active species. Most cetaceans are grouped in a category designated as group I. Certain othe genera and species listed in § 3.104(b) of the standards proposed herein have been designated as Group II.

The four factors which must be considered when determining minimum space requirements for cetaceans are as follows: The minimum horizontal dimension (MHD), the depth, the surface area of the pool, and the volume of the pool.

MHD has been designated to mean the diameter of a circular pool, or in the case of a square, rectangular, oblong or other shape pool, the diameter of the largest circle that can be inserted within the confines of such pool. The MHD for each marine mammal is calculated to give it adequate freedom of movement in the pool horizontally. It is proposed herein that the MHD for a pool housing marine mammals cannot be less than the MHD required for the longest species of marine mammal contained therein.

It is also proposed that the primary enclosure for cetaceans (e.g., whales, porpoises, and dolphins) need consist of only a pool of water. The reason for this is that cetaceans spend all of their time in water. It is proposed that all group I cetaceans must be provided a pool of water with an MHD which is at least two times the average adult length of the longest cetacean to be contained therein, as measured from the tip of its lower jaw to the notch in the tail fluke. In the case of a narwhale, if a tusk is present or will potentially develop, the measurement shall be based on the average adult length from the tip of the tusk to the notch in the tail fluke. It is also proposed that group II cetaceans must be provided a pool with an MHD of four times the average adult length of the longest group II cetacean to be housed therein. If both group I and group II cetaceans are to be housed in the same enclosure pool, the MHD requirement must be determined for both groups and the MHD must be equal to or greater than the larger of the two.

The minimum depth of a primary enclosure pool for cetaceans would be required to be at least one-half the average adult length of the longest species of cetacean housed therein regardless of group I or II status, as measured from the tip of its lower jaw to the notch of its tail fluke. Computing proper depth, using this criteria, would allow the cetacean to be completely covered with water and still allow for vertical freedom of movement. It is therefore proposed that the minimum depth of a pool housing cetaceans shall not be less than 1.52 meters (5 feet) or one-half the average adult length of the longest species of cetacean housed therein, whichever is greater. Regardless of the total number of cetaceans to be housed in the pool, the minimum depth shall not be allowed to be less than the minimum determined for the average adult length of the longest species of cetacean housed therein. A pool of such depth which meets the required MHD and surface area would be considered to contain a sufficient volume of water for one or two group I cetaceans of one to four group II cetaceans.

The volume requirement for a pool of water containing two group I cetaceans or for four group II cetaceans would be calculated using the MHD and depth requirements described above. It is proposed herein that one half the required MHD squared, times 0 (3.14), times the required depth would result in the volume required by the standards. Dividing this volume by two would result in the volume necessary for each group I cetacean, and dividing it by four would result in the volume necessary for each group II cetacean. The volume which would be required to be added to a pool containing additional cetaceans (more than two group I cetaceans or more than four group II cetaceans) may be obtained by expanding the lateral dimensions, by deepening the pool, or by a combination of the two.

One comment received was that the proposed regulations made no provisions for surface area requirements available to the cetaceans for breathing space. There was some concern

that, as more cetaceans are added to the pool, volume requirements could be met by only deepening the pool; eventually there would not be enough surface area for all the cetaceans to be on the surface at the same time to be able to breathe. This proposal obviates that problem by requiring that a pool containing cetaceans must also have a minimum surface area. This would be determined by dividing the average adult length of each cetacean in the pool by two and squaring this amount, then by multiplying the answer by 0 (3.14) times 1.5, which is the safety factor discussed below. The sum of the results of this computation for all cetaceans to be housed in a pool would represent the required surface area of the pool. It is not likely all cetaceans would be on the surface at the same time, but if that should occur they would all have room for breathing. A safety factor is also considered advisable to allow a little more than the cetaceans' own area. Therefore, it is proposed herein that a factor of 1.5 be arbitrarily used, since this would give each cetacean its own area plus 50 percent.

There were several comments received regarding space requirements for sirenians. Some stated the MHD need not be more than 1½ times the body length. Others commented that the 1.52 meters (5 feet) minimum was too deep for newborn sirenians. Others said that 1.52 meters (5 feet) was not deep enough as sirenians breed in a vertical position and feed in a diagonal position. After giving due consideration to all the comments, it has been decided to propose that the space requirements for sirenians be computed in the same manner as the space requirements for group I cetaceans, in that the MHD be based on two times the average adult length of a sirenian, as measured from the tip of the muzzle to the notch in the midline of the tail in the dugong, and from the tip of the muzzle to the most distal point in the midline of the rounded tail of the manatee. There are only two genera of sirenians, both being similar in size. Therefore for the purposes of these regulations, the average adult length would be essentially the same for both species.

It is therefore proposed herein that the depth of the pool holding sirenians cannot be less than one-half the average adult length of a sirenian or 1.52 meters (5 feet), whichever is greater. There may be areas in the pool that are less than 1.52 meters (5 feet), but this should not be included when computing MHD, volume, or depth. Surface area requirements for sirenians would be the same as for cetaceans.

There were few comments in regard to the proposals of space requirements for pinnipeds. One stated that there should be a limit of 10 pinnipeds per enclosure. This is considered to be an option of management. As long as management can properly meet the space and water quality requirements and can maintain the animals in a state of good health, the Department will not propose to restrict the number of pinnipeds that may be housed in the same enclosure. Most comments received stated that a minimum depth of 1.52 meters (5 feet) was not necessary and that the depth in the pool should be less. There was another comment stating that no ramp was necessary for the pinniped to leave the pool since pinnipeds can jump or pull themselves out of the water if the resting area is close to the water's edge.

After due consideration of all comments received, it is proposed herein that the space requirements for pinnipeds remain essentially the same in this proposal, with the exception of depth and ramp requirements. It is therefore proposed that the space requirements for a primary enclosure housing pinnipeds (e.g., seals, sea lions, and walruses) should include a pool of water as well as a dry area for resting and social activities, as they spend much of their time out of the water. The space allowed for each pinniped for freedom of movement, mating, postural adjustments and sleep would be determined by its size and by the number of pinnipeds sharing the same enclosure. A pinniped appears to require a minimum dry area at least 50 percent larger than its own length squared. As more pinnipeds are added to the primary enclosure less space should be allotted per animal because of the greater amount of communal space available. It is proposed that this be accomplished by reducing the multiplier of 50 percent for the first animal by 10 percentage points for each additional animal. The effect of this would be that the space requirement starting with animal number six and every additional animal would be figured by squaring its average adult length.

In computing the minimum dry space requirements for pinnipeds, it is proposed that the average adult length of each pinniped housed in the primary enclosure shall be ascertained by measuring it from the tip of its nose to the tip of its tail in a horizontal or extended position. The measurements should then be arranged in descending order from the largest pinniped, based on its average adult length for each species represented, which would be animal number one, to the smallest pinniped at the end. The largest pinniped would be given a minimum dry space of its own length squared, plus 50 percent, or its own length squared times 1.5. The second largest pinniped would be given a minimum dry space of its own length squared, plus 40 percent, or its own length squared times 1.4. The third largest pinniped would be given a minimum dry space of its own length, plus 30 percent, or its own length squared times 1.3. This would be continued to the fifth largest pinniped which would receive a minimum dry space equal to its own length squared, plus 10 percent, or its own length squared times 1.1. For all additional pinnipeds (more than five) added to the primary enclosure, the space would be determined by allotting each such pinniped a minimum dry space equal to its own average adult length squared. The sum of such figures for each pinniped in a primary enclosure would represent the minimum dry resting and social activity area required.

A pool of water whose MHD is twice the average adult length of the longest species of pinniped contained therein appears to have sufficient surface area for two such pinnipeds. However, additional surface area would be required when more than two pinnipeds are housed in the same primary enclosure. Pinnipeds spend one-half or less of their time in the water, and, therefore, rarely would all pinnipeds in a primary enclosure be in the pool of water at one time. It is, therefore, proposed that when more than two pinnipeds are housed in the same primary enclosure, the minimum surface area of the pool must be two-thirds of the dry resting and social activity area required for such pinnipeds. For purposes of calculation, it is proposed that the minimum depth of the pool shall not be less than 0.91 meters (3 feet) or one-half the length of the longest species of pinniped contained therein, whichever is greater. This is a change from the 5 feet in the prior proposal which is deemed to be justified by the comments. Any part of the pool less than 0.91 meters (3 feet) deep would not be considered in the calculation for either the dry resting area or pool size. There were some comments stating that the proposed resting and social activity area was excessive, but the proposed space requirements were just slightly more than would be needed for the pinnipeds to turn around if all of them were out of the water. The comment regarding the proposed requirement of a ramp for entering and leaving the pool was considered valid, and, therefore, that requirement has been deleted from this proposal. There were no comments concerning the size of the pool being either too small or too large.

A few comments were also received with regard to the proposed space requirements for polar bears. One

person commented that the pool should be bigger than proposed. Another thought that the proposed den size was too large. However, most agreed with the space requirements. Therefore, it is proposed that these proposed requirements remain essentially the same. It is proposed herein that a minimum dry resting area of 37.16 square meters (400 square feet) be provided for one or two polar bears and an additional 3.72 square meters (40 square feet) for each additional polar bear contained in a primary enclosure. It is also proposed that the den shall be at least 1.83 meters (6 feet) in width and depth and 1.52 meters (5 feet) in height (which is 1 foot less than the previous proposal), which would allow sufficient space for one polar bear to make normal postural adjustments. A separate den would be required for each adult female of breeding age as a private enclosure. It is also proposed that sufficient shade, other than the den, be provided in a primary enclosure containing polar bears. It is further proposed that the pool in any primary enclosure for polar bears be a minimum of 2.44 meters (8 feet) by 3.66 meters (12 feet) and at least 1.52 meters (5 feet) deep.

Sea otters appear to need a dry resting area and a pool of water in their primary enclosures. It is necessary for sea otters to have a pool of water to keep their hair coat wet at all times for proper grooming and for insulation of the body, as they spend most of their time in the water. They cannot regulate their body temperatures properly if the hair coat is allowed to dry. These animals when wet will usually die of exposure or hypothermia if the hair coat becomes soiled or hyperthermia if the hair coat is allowed to dry. Objective data concerning the minimum space requirements for sea otters is not available to the Department at this time. Therefore, the following minimum space requirements are proposed since this Department has no information that would indicate that such proposals are not reasonable, necessary, appropriate, or adequate for sea otters. The MHD of a pool of water for sea otters shall be at least twice the average adult length of the longest sea otter contained therein, as measured from the tip of its nose to the tip of its tail. It is also proposed that the minimum depth of the pool shall not be less than 0.91 meters (3 feet). The volume of water in such a pool would appear to be sufficient for one or two sea otters. It is also proposed that the minimum dry resting area for one or two sea otters be equal to the minimum surface area of the pool required for such sea otters.

When more than two sea otters are housed in the same primary enclosure, both the dry resting area and the pool volume would have to be increased, based on the average adult length of the sea otters. The additional minimum volume of water necessary to contain more than two otters would be calculated by multiplying the surface area of the pool by 0.91 meters or 3 feet (minimum depth of pool), and dividing the result by two. The resulting answer would represent the additional minimum volume of water the pool must contain for such sea otters. The surface area of a pool containing sea otters would be calculated in the same manner as the surface area of a pool containing cetaceans, which has been previously discussed. It is further proposed that the minimum dry resting area for two sea otters, which shall be computed as specified in § 3.104(f) of this proposal, be increased by one-half the square of the average adult length of each additional sea otter times 0 (3.14), when more than two such animals are contained in an enclosure.

Several comments were received with regard to the feeding of marine mammals. Some of the comments requested that the Department specify the kind of fish to be fed to captive marine mammals, require the food be vitamin fortified, and require extensive records of individual food intake. Most of these comments deal with husbandry or curatorial matters, and the Department does not wish to interfere as these are considered management responsibilities. The Department would require that marine mammals be maintained in a state of good health and would make this the responsibility of management.

Some comments requested that the food be allowed to come to ambient temperature before freezing. It is this Department's opinion that it would be risky to allow this because bacterial contamination and decomposition would be well advanced since thawing frozen fish or other food usually takes some time, and the surface thaws considerably sooner than the deeper portions.

It has come to the attention of this Department that frozen food may be thawed up to 24 hours prior to feeding without causing adverse effects. Therefore, the 18-hour time period for thawing of food, which was originally proposed, will be changed to 24 hours in this proposal, and the time would start running when the food is removed from the freezer. The food would be allowed to warm slightly but only immediately before feeding and not for an extended period of time. This would be to assure that no ice remains in the food since there is some opinion that ice in food could cause digestive upsets in marine mammals.

The Department is also deleting the term "competent" before the word "employee" in this proposal as it is hard to define a competent employee. Management of the facility would be responsible for assuring that the animals are properly fed and it is expected that this task would be entrusted to an employee who is capable of assuming the responsibility.

There were some comments that no provision was made to allow public feeding. The Department proposes to relax this restriction and allow public feeding provided it is closely supervised. The facility would still have the responsibility of assuring that each marine mammal receives a proper diet and that no foreign bodies or nonfood objects are given to the animals either maliciously or accidentally by the participating public. Close or constant supervision would be required to be maintained at all times when there is marine mammal/public contact. This would mean that an employee would need to be physically present to exercise such supervision during the contact period. The food given to the animals would be required to be obtained from the facility housing the marine mammals.

Water quality is extremely important for marine mammals and at least minimum standards need to be maintained for the good health and well-being of the animals. Marine mammals are air breathing animals, and it is not necessary for the water to contain sufficient oxygen for respiratory functions as there is no gaseous exchanges between marine mammals and the water.

Several comments were received indicating that polar bears should have less restrictive standards for water in pools that the other marine mammals. Pools for polar bears are generally smaller than pools of other marine mammals, and they are usually drained, cleaned, and refilled with water on a routine schedule. There is usually a continual flow of new water into the pool and the overflow is discharged. There is generally no attempt to reclaim the water by filtration. For these reasons, APHIS did not originally propose that the water quality standards for polar bears be the same as for other marine mammals, but simply required that the water quality would have to be maintained in such a manner as would be necessary to keep the polar bears in a state of good health. The Marine Mammal Commission has recommended that no special exemptions be allowed for polar bear pools. Therefore, this Department, being in agreement with that recommendation, is proposing herein that polar bear pools meets the same water quality requirements as for other marine mammals.

Some comments indicated that coliform count and chemical monitoring are not necessary in pools that receive

sea water directly from bays and estuaries. This appears to be true with respect to chemical monitoring, with the exception of chemicals that are added to maintain water quality, but is not true with respect to coliform count. It is proposed that both of these should still be done routinely to assure the proper quality of water if chemicals are added. This is especially true in light of the fact that some bays and estuaries are badly contaminated with human waste and sewage; therefore, coliform counts are important to assure that the water meets the compliance which are proposed herein.

Requests were also received that minimum and maximum levels of all chemical additives be specified in the standards. This is a function of management, as the Department would allow chemicals to be added to the water to assist in maintaining proper water quality and to control excessive algae and moss. These chemical additives, regardless of which ones are used, would not be allowed to be toxic or strong enough to cause the marine mammals injury or discomfort, and chemical monitoring is the only way to determine strength and effective levels of the chemicals.

It was also pointed out in some comments that eye infections, corneal opacities, poor hair coat, or contamination of surface wounds on the animals are not necessarily a sign of poor water quality, as was indicated by the former proposal. It is true that water quality can be substandard and still not cause the marine mammals to exhibit these conditions. It is also true that certain animals can exhibit some of these conditions and still have the proper water quality. If there is an isolated animal or two with a problem, it is probably not due to the water quality, but if most, or all, or the animals have similar conditions to some degree, then water quality must be suspected and that would be the starting place when trying to diagnose the etiology of the conditions. However, the Department must agree that a general statement that any of the above conditions automatically mean that the water quality is unacceptable if not valid. This proposal has therefore deleted such statement.

There were other comments that normal sea water can contain as much as 36 parts per thousand of salt and not be harmful to marine mammals. There was also a comment by the Marine Mammal Commission that there should be no minimum level of salt since it is proposed to allow fresh water to be used if the individual marine mammal species can tolerate fresh water over an extended period of time. These comments were considered to be valid and the part of this proposal dealing with salinity has been amended accordingly.

With respect to water quality, it is further proposed herein that the purity of water in closed systems be assured by keeping the coliform bacteria count below 1,000 MPN (most probable number) per 100 ml. of water and that filtration systems be used to filter out particulate material. All marine mammals defecate in the water of their pool, and the filtration system must be able to circulate the water through the filters to keep it free from excrement as well as dirt or other debris that gains entry to the pool. It is proposed that the filtration of recirculated water, or the addition of new water, be at a rate which is sufficient to maintain proper water quality at all times. It is also proposed that when salinized water is used, it be within the range of the salinity of normal sea water not exceeding 36 parts per thousand. Further, it is proposed that the pH of the water be monitored to assure that it approximates the pH of normal sea water. Chemicals that are added to the pool to control bacteria or algae must not be so strong as to adversely affect the quality of the water to the point that it might be harmful or cause discomfort to the marine mammals.

About the only comments received that are concerned with the proposed sanitation standards were comments by several persons that algae is not harmful to marine mammals and is, in fact, beneficial in small amounts. This Department did not intend to completely prohibit algae or moss. However, any algae or moss which is present must be kept under control. Therefore, the sanitation standards which appeared in the original proposal are proposed herein without change.

These standards are necessary to assure that the facility which houses marine mammals is maintained in a clean and sanitary condition so as not to pose a health hazard to the marine mammals contained therein, or to the employees who work at the facility, or to the viewing public.

Standards regarding pest control which appears in the original proposal are also part of this proposal.

The only comments received with regard to employees were requests that the type of training requirements be clarified. The type of training, be it academic or on-the-job training, will not be specified by this Department. The responsible officials of a facility which houses and maintains marine mammals must assure that their employees have sufficient training to do the job assigned and that captive marine mammals are not caused to suffer because of improperly trained employees. What is required by the proposed regulations (both these ant the ones of August 19, 1977) is that employees taking care of the marine mammals must be under the supervision of an experienced marine mammal caretaker.

With respect to the subject of separation of animals, it is proposed that marine mammals that are not compatible shall not be housed in the same primary enclosure. In addition to the separation of imcompatible species, there should also be separation among the same species if the good health and well-being of any animal contained therein is in jeopardy. It is also proposed that marine mammals that are incompatible with other animals shall not be housed near animals that would cause them stress or discomfort or would interfere with their good health. On the advice of the Marine Mammal Commission, the Department has also added to this proposal the requirement that marine mammals be given access to other animals.

Those commenting on the proposed regulations and standards also mentioned veterinary care of marine mammals. Those comments were considered and appropriate action was taken where necessary. It was recommended that pools used for isolation or treatment, or for any reason as short-term holding pools, need not meet the lateral and depth dimensions of a permanent housing pool. This Department feels these comments are reasonable and accepts the recommendation. There were also some comments that yearly blood tests be required, but in the opinion of this Department, such activity should be a responsibility of management and the veterinary care program. The Marine Mammal Commission, in its advisory capacity, recommended that a thorough and complete necropsy be required following the death of any marine mammal in captivity. After carefully considering the recommendation, this Department has decided that such a necropsy would be useful in determining the cause of death, monitoring the health, and determining the adequacy of veterinary care of the animals. It is therefore proposed that a complete necropsy must be conducted by a veterinarian on all marine mammals that die in captivity. A necropsy report would have to be prepared by the veterinarian performing the necropsy. This report would be required to be kept by the management of the facility where the animal died for 2 years so that it could be presented to Department inspectors on request.

COMMENTS REGARDING TRANSPORTATION STANDARDS

Section 13 of the Animal Welfare Act (7 U.S.C. 2143) requires the Secretary to promulgate standards to

govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors. Provisions of the Animal Welfare Act Amendments of 1976 (Pub. L. 94-279), enacted on April 22, 1976, also require the Secretary of Agriculture to promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith, by intermediate handlers and carriers of animals consigned by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or of any State or local government, for transportation in commerce. The Secretary was also given authority to promulgate such rules and regulations as he determines necessary to assure humane treatment of animals in the course of their transportation in commerce, including requirements such as those with respect to containers, feed, water, rest, ventilation, temperature, and handling.

The proposed transportation standards contained herein have been written to provide marine mammals with the same general protection and care as that proposed for all other species of animals covered by the Animal Welfare Act and published in the FEDERAL REGISTER on August 19, 1977, at 42 FR 42044.

The Marine Mammal Commission and other sources of expertise in transporting marine mammals have offered suggestions which were helpful in writing the proposed standards. In drafting the proposed standards contained herein, the Department has given careful consideration to the various suggestions and recommendations. For the sake of uniformity and consistency, it has followed the same format and imposed similar regulations on common carriers and intermediate handlers that transport marine mammals as those that have been promulgated for all other warmblooded animals covered by the Animal Welfare Act.

Special provisions were being considered for marine mammals which are part of traveling shows and are not permanently housed in stationary facilities. There were numerous comments to the effect that circuses and other traveling animal acts which exhibit marine mammals were not properly covered in the original proposal. The Marine Mammal Commission, as well as members of humane groups, have recommended to the Department that no special allowances be made for these animals and the regulations and standards as proposed should apply to all marine mammals covered by the Animal Welfare Act. After a thorough consideration of these recommendations, it is the decision of this Department to propose that circuses and traveling shows meet the same requirements as other exhibitors.

Most shipments of marine mammals will be consigned to private transporting concerns that specialize in transporting marine mammals. These business concerns should have the experience and the equipment to assure the safe delivery of the marine mammals to their destinations. It appears that very few marine mammals would be transported by the normal common carrier or intermediate handler. However, the proposed transportation standards for marine mammals would apply to all dealers, exhibitors, research facilities, carriers, and intermediate handlers.

There were several comments about consignments to normal common carriers and intermediate handlers and the obligations and responsibilities of the carriers. One comment was that no marine mammal should be transported unaccompanied at any time. Some comments suggested that prior arrangements should be made requiring the consignee to meet the shipment on arrival at its destination. Suggestions were also made that a 24-hour telephone number be required on the waybill so the carriers and intermediate handlers can notify the consignee immediately on arrival anytime day or night. The original proposed standards and regulations require that the carrier must attempt to notify the consignee as soon as possible after the arrival of the animal at the final terminal, and if unable to do so, must try at least once every 6 hours. A comment was received that the 6-hour requirement should be reduced to no more than 4 hours. After carefully considering this suggestion, it is proposed to lower that requirement to 4 hours.

As was done in the original proposal, requirements for primary enclosures used in transporting the different orders of marine mammals are divided into two categories in this proposal. Pinnipeds and the marine carnivores (polar bears and sea otters) are in one category, and it is proposed that they can be shipped in crates similar to those that are used in transporting other zoo animals. It is important that these animals be given sufficient space in the primary enclosure used for transportation to assure that they have room to move or lie down in normal postural positions without impeding their appendages. The second category includes the cetaceans and sirenians, and it is proposed that they be transported in devices which are designed to support their body weight and provide easy access to the animals by employees to administer their needs in transit. Without the buoyancy of water, these marine mammals move with great difficulty. Therefore, it is proposed that cetaceans and sirenians be transported in well padded straps, slings, harnesses, or other devices for body support that are designed to protect the animal while in transit and to allow attendants to administer to their needs. The proposed standards for transporting cetaceans and sirenians take into account the need of these animals to be supported and protected from injury during transportation. There was a comment from one person that straps, slings, harnesses, etc., are not used in transporting cetaceans and sirenians, and the animals he transports are place on a foam rubber pad and no restraining devices are used whatsoever. The Department considers a foam rubber pad a form of body support. Furthermore, some devices would have to be used in getting the animals in and out of the transporting conveyance. A large cetacean, totally unrestrained, could be dangerous to itself and the conveyance if allowed to thrash about for any reason.

There were several comments that the proposed ventilation requirements of the primary enclosures used to transport marine mammals, other than cetaceans and sirenians, were not adequate. It was the opinion of those commenting that due to the body temperature regulating capacity of marine mammals, in that they have a tendency toward overheating, the proposed 8-percent ventilation on two ends of the enclosure was not sufficient. It is agreed that this is a valid consideration and, therefore, it is proposed to increase the ventilation requirements to at least 15 percent on each side of all four sides of the enclosure. This should provide adequate ventilation for the animal contained therein in both a prone and standing position.

Comments were also received regarding the proposed requirement that female marine mammals in season (estrus) shall not be transported in the same primary enclosure with any male marine mammals. It was commented that it is not easy to determine if a marine mammal is in season. It is agreed that this is difficult. Therefore, it is proposed herein that female marine mammals shall not be transported in the same primary enclosure with a sexually mature male.

Some comments also stated that the proposed size of the primary enclosure used to transport pinnipeds was too large and extensive. They stated that pinnipeds seldom, if ever, fully extend their body and flippers in all directions. It was also stated that a small primary enclosure was better since the animal would not have room to move about excessively and injure itself. It is the determination of APHIS that the larger primary enclosure is more

humane and better for heat dissipation and ventilation. It was interpreted by some who commented that contact with supporting framework or other solid structures during transportation was prohibited by the proposed regulations and standards, whereas the Department's intent was that these solid objects, if capable of causing injury, should be padded or eliminated.

A few comments were received regarding the primary conveyance used to transport marine mammals. One person thought that the proposed regulation concerning the animal cargo space and the prevention of engine exhaust fumes and gases was too restrictive. It was argued that there should be some allowances since there was no way to completely prevent any exhaust fumes from entering, especially when the doors to the cargo space are open when loading and unloading cargo. It was not intended that there would be absolutely no tolerances and that any exhaust fumes or gases were prohibited. It was intended that every precaution be taken to protect the animal cargo space from being filled with exhaust fumes and gases that could reach such concentration that would make the animals ill or even cause their death. The Department, therefore, proposes that the ingress of exhaust fumes and gases cannot exceed that ordinarily contained in the passenger or operator compartment of the primary conveyance.

A comment was also received regarding the proposed requirement of positioning animals in the primary conveyance in such a manner that in an emergency they could be removed from the conveyance in a 5-minute period. It was pointed out that certain marine mammals are extremely large and heavy and that special animal handling equipment is required to move these animals. Therefore, it is proposed herein that marine mammals be positioned in a conveyance in such a way that in emergencies they can be removed from the primary conveyance as soon as possible.

Most comments received were directed toward not feeding or watering the marine mammal during transit. Some stated that feeding or watering might result in the animal vomiting, and in certain animals, this could be very detrimental if not fatal. Another commented that feeding results in a problem of fecal contamination that can be minimized by fasting. The primary concern of the Department, however, in proposing regulations for feeding and watering while in transit is to assure that the marine mammal arrives at its destination in the best physical condition possible. It is true that denying the animal food and water while in transit is not necessarily cruel and inhumane treatment. Experts in the field of transporting marine mammals must determine what is best for the animal to assure that it does not suffer harm or injury during transportation. This is one of the reasons for proposing that an attendant accompany certain types of marine mammal shipments (shipments involving sirenians, cetaceans, and sea otters, and also shipments lasting more than 12 hours) so the condition of the animal can be closely observed.

Marine mammals are generally not fed while in transit and, in most cases, it is an accepted practice to actually fast the animals for a short period prior to shipment. The sea otter is an exception to this general rule in that it should have food available while in transit. Some comments were received indicating that sea otters should not be fed while in transit because of possible problems with sanitation inside the primary enclosure. However, on the recommendation of the Marine Mammal Commission, this Department has determined to propose that sea otters have food available while in transit.

Some comments expressed a desire that all shipments of marine mammals should be accompanied by an attendant. This was not proposed because when certain marine mammals are confined in strong, secure primary enclosures during shipments an attendent cannot monitor or service their in transit needs as he would not have access to the animal. If prolonged or extended shipping periods of more than 12 hours in transit occur, then it is proposed that all marine mammals are to be accompanied by an attendent.

Another comment presented the idea that the reason cetaceans and sirenians should have freedom of movement of the pectoral flippers is primarily for regulating the body temperature by waving or moving the flippers and not for relieving pressure on the rib cage which might interfere with the animal's breathing ability, as was claimed by the Department. This may be true to a certain extent. However, it is determined that relieving pressure on certain parts of the marine mammal's body when out of the water for an extended period of time is still the primary consideration in requiring freedom of movement of the flippers.

Therefore, in consideration of the above comments, it is proposed that an attendent be required to accompany shipments of cetaceans, sirenians, and sea otters because of the required special handling, feeding, and watering, or because of problems encountered due to their size, It is proposed that other marine mammals are to be so accompanied only during prolonged shipments. The skin of cetaceans and sirenians would be required to be kept moist in transit or protected by some substance such as lanolin to keep it from drying. It is also important that the pectoral fins of both cetaceans and sirenians have full mobility during transit. Periodic positional adjustments would have to be made when cetaceans and sirenians are transported in straps, slings, harnesses, or other body supports to prevent pressure necrosis of the skin over bony prominences or other points where extreme pressure is concentrated from the weight of the animal. It is proposed that restraining straps, securing the cetacean or sirenian to the sling, harness, or other device, shall be tight enough to restrain the marine mammal, but not so tight that they become irritating to the animal. Struggling and thrashing about would have to be minimized to prevent overheating of the marine mammal.

Sea otters must keep their hair coat wet for proper insulation and temperture control of their body. They will not groom their fur if it dries or becomes soiled with feces. It is therefore proposed that at least on-half of a primary enclosure used to transport sea otters shall be leakproof and contain sufficient crushed ice or water to provide the sea otter contained therin with moisture necessary to allow each sea otter to keep its hair coat wet. The ice or water would also serve to prevent feces and urine from contaminating the hair coat. it is also proposed that a dry area be available in the primary enclosure used to transport a sea otter so the animal can get out of the ice and water for resting or grooming purposes.

With regard to terminal facilities, the only comments received questioned the necessity of providing protection from the snow and cold weather in the case of arctic or ice dwelling marine mammals. These were considered valid and this proposal provides exceptions for ice dwelling marine mammals. There were no comments that objected to providing shelter from sunlight.

It is proposed that the indoor animal holding area be provided with fresh air either by means of windows, doors, vents, or air conditioning and be ventilated so as to minimize drafts, odors, and moisture condensation. The ambient or air temperature would not be allowed to fall below 7.2° C (45° F) except in certain cases, and would not be alowed to exceed 29.5° C (85° F) at any time. This is the temperature range which is being required for the transporation of all other animals under the Animal Welfare Act. Proposing different temperature ranges for marine mammals would impose an unfair hardship on terminal facilities since it might necessitate different

holding areas for marine mammals. The indoor animal holding area would be required to be cleaned and sanitized in the manner prescribed in § 3.107 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent disease hazards.

It is further proposed herein that carriers and intermediate handlers, in transporting live marine mammals from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility, including loading and unloading procedures, must provide shelter from sunlight when sunlight is likely to cause overheating or discomfort. It is also proposed that the terminal facility provide shelter from snow. Transporting devices would be required to be covered to provide protection for live marine mammals during snow. The terminal facility would also be required to provide the marine mammal with shelter from cold weather. Transporting devices would have to be covered to provide protection for live marine mammals when the atmospheric or outdoor temperature falls below 10° C (50° F) unless the marine mammal is an ice dwelling animal and can safely tolerate lower temperatures.

There were no comments received with regard to handling marine mammals at terminal facilities. The Department proposes that carriers and intermediate handlers should be responsible for moving live marine mammals from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility as expeditiously as possible. This proposal also contains a provision stating that care shall be exercised to avoid handling of the primary enclosure in a manner which may cause physical or emotional trauma to the live marine mammal contained therein. There is also a provision which states that primary enclosures housing live marine mammals shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may result in their falling.

It is possible to encounter a wide variation of temperature ranges during transportation, and the ambient temperature extremes need to be controlled in order to prevent discomfort to the marine mammal and to protect the health and well-being of the animal. Marine mammals are generally more affected by hot temperatures than they are by cool or cold temperatures.

One comment received was that the proposed temperature of 35° C (95° F) within primary enclosures was too warm for marine mammals and that the allowable temperature should not exceed 29.4° C (85° F). Considering the problem of body temperature regulations and heat dissipation, due to the subcutaneous blubber layer of most marine mammals, is it proposed that the temperature around the marine mammal within the primary enclosure during transportation shall not exceed 29.4° C (85° F) for a period of more than 45 minutes nor fall below 7.2° C (45° F) for a period of more than 45 minutes unless the person transporting the marine mammal knows that is is acclimated to such higher or lower temperatures.

A detailed explanation of the proposed regulations and standards dealing with marine mammals also accompanied the original proposal of August 19, 1977. Anyone desiring additional information regarding this proposal should refer to that proposal, which appeared in Vol. 42, No. 161, of the FEDERAL REGISTER on Friday, August 19, 1977.

PART 1—DEFINITION OF TERMS

Accordingly, it is proposed that the regulations and standards (9 CFR 1.1 et seq.) be amended as follows:

1. It is proposed that the second sentence in § 1.1(n) of the regulations (9 CFR 1.1(n)) be amended to delete the words "aquatic animals," following the word "birds" and before the word "rats".

2. It is proposed that § 1.1(gg) of the regulations (9 CFR 1.1(gg)) be amended by inserting a comma after the word "compartment" and adding the word "pool" immediately thereafter and before the word "or".

3. It is proposed that a new definition for minimum horizontal dimension (MHD) be added to the end of § 1.1 of the regulations (9 CFR 1.1) to read as follows:

§ 1.1 Definition.

* * * * *

(qq) "Minimum horizontal dimensions" (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangular, oblong or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

PART 3—STANDARDS

4. It is proposed that the Table of Contents in Part 3—Standards of Title 9, Code of Federal Regulations, be amended by making present Subpart E of the Table of Contents, Subpart F, and renumbering §§ 3.11 to 3.114 thereof to §§ 3.125 through 3.138, respectively, and by adding a new Subpart E as follows:

Subpart E—Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals.

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3.100 Special considerations regarding compliance.
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5. It is proposed that present Subpart E of Part 3—Standards (9 CFR Part 3, Subpart E) would be redesignated as Subpart F and §§ 3.100 to 3.114 thereof would be renumbered as §§ 3.125 through 3.138, respectively, and a new Subpart E would be added to read as follows:

Subpart E—Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals

FACILITIES AND OPERATING STANDARDS

§ 3.100 Special considerations regarding compliance.

(a) All persons subject to the Animal Welfare Act who maintain marine mammals in captivity must comply with the provisions of this subpart, unless they are granted permission by the Secretary to deviate from one or more of the provisions. The provisions of this subpart shall not apply, however, in emergency circumstances where compliance with one or more provisions would not serve the best interest of the marine mammals concerned.

(b) From the effective date of the regulations and standards of this subpart, all facilities housing marine mammals which are not in full compliance with the standards shall have 60 days during which they may apply to the Secretary for written permission to operate as a licensee or registrant under the Act: Provided, however, That:

(1) Application is made to the Secretary, in writing, listing in detail all

areas of deviation from the requirements of this subpart, the time period requested for each deviation, and the justification for such request.

(2) The Secretary shall deny any such application if he determines that allowing it would be detrimental to the health and well-being of the marine mammals concerned.

(3) Such permission to deviate from the provisions of this subpart shall not be granted for a period exceeding 4 years from the effective date of these provisions.

(c) Any person desiring to deviate from the requirements of this subpart for the purpose of experimentation in the areas of husbandry and care of marine mammals may apply to the Secretary for written permission to do so: Provided, however, That:

(1) Application is made to the Secretary, in writing, listing in detail all areas of deviation from the requirements of this subpart, the time period requested for each deviation, and the justification for such request.

(2) The Secretary shall deny any such application if he determines that allowing it will be detrimental to the health and well-being of the marine mammals concerned.

§ 3.101 Facilities, general.

(a) *Construction requirements.* (1) Housing facilities for marine mammals shall be structurally sound and shall be maintained in good repair, to protect the animal from injury, to contain the animals, and to restrict the entrance of unwanted animals.

(2) All marine mammals shall be provided with protection from abuse and harassment by the viewing public by the use of a sufficient number of employees to supervise the viewing public, or by physical barriers, such as fences, walls, glass partitions, or distance, or both.

(3) Any primary enclosure pool, including ramps for entering or leaving the pool, shall be constructed of materials having a nonporous, waterproof finish, which shall facilitate proper cleaning and disinfection, and which shall be maintained in good repair as part of a regular ongoing maintenance program.

(4) Facilities which utilize natural areas such as tidal basins, bays, or estuaries for housing marine mammals shall be exempt from the waterproof finish, nonporous surface construction, and drainage requirements of paragraphs (a)(3) and (c)(1) of this section, but they must meet the minimum standards with regard to space, depth, and sanitation. Water quality must be monitored as in other facilities.

(b) *Water and power supply.* Reliable and adequate sources of water and electric power shall be provided by the facility housing marine mammals. Written contingency plans must be submitted to and approved by Veterinary Services regarding emergency sources of water and electric power in the event of failure of the primary sources, if such failure could be detrimental to the good health and well-being of the marine mammals housed therein.

(c) *Drainage.* (1) Adequate drainage shall be provided for all primary enclosure pools and shall be located so as to rapidly eliminate all of the water contained in such pools when necessary for cleaning the pools or for other purposes. Drainage effluent from primary enclosure pools shall be disposed of in a manner that complies with all applicable Federal, State, and local pollution control laws.

(2) Drainage shall be provided for primary enclosures and areas immediately surrounding pools. Drains shall be located so as to rapidly eliminate excess water (except in pools). Such drainage effluent shall be disposed of in a manner that complies with all applicable Federal, State, and local pollution control laws.

(d) *Storage.* Supplies of food shall be stored in facilities which adequately protect such supplies from deterioration, molding, or contamination by vermin. Refrigerators and freezers shall be used for perishable food. No substances which are known to be or may be toxic or harmful to marine mammals shall be stored or maintained in the marine mammal food storage or food preparation areas.

(e) *Waste disposal.* Provision shall be made for the removal and disposal of animal and food wastes, dead animals, trash, and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. All waste disposal procedures must comply with all applicable Federal, State, and local laws pertaining to pollution control, protection of the environment, and public health.

(f) *Washroom facilities.* Facilities such as washrooms, basins, showers, or sinks, shall be provided to maintain cleanliness among the marine mammal caretakers.

§ 3.102 Facilities, indoor.

(a) *Ambient temperature.* The air and water temperatures in indoor facilities shall be sufficiently regulated by heating or cooling to protect the marine mammals from extremes of temperature, to provide for their good health and well-being and to prevent discomfort, in accordance with the currently accepted practices as cited in appropriate professional journals or reference guides, depending upon the species housed therein. Rapid changes in air and water temperatures shall be avoided.

(b) *Ventilation.* Indoor housing facilities shall be ventilated by natural or artificial means to provide a flow of fresh air for the marine mammals and to minimize the accumulation of chlorine fumes, harmful gases, or other objectionable odors. A vertical air space averaging at least 1.83 meters (6 feet) shall be maintained in all primary enclosures housing marine mammals, including over their pools of water.

(c) *Lighting.* Indoor housing facilities for marine mammals shall have ample lighting, by natural or artificial means, or both, of a quality, distribution, and duration which is optimum for the species involved. Such lighting shall provide uniformly distributed illumination of sufficient light intensity to permit routine inspections, and to permit adequate observation and cleaning of all parts of the primary enclosure including any den areas. Lighting of primary enclosures shall be designed so as to prevent overexposure of the marine mammals contained therein to excessive illumination.

§ 3.103 Facilities, outdoor.

(a) *Environmental temperatures.* Marine mammals shall not be housed in outdoor facilities unless the air and water temperature ranges which they may encounter during the period they are so housed do not adversely affect their health and comfort. A marine mammal shall not be introduced to an outdoor housing facility until it is acclimated to the air and water temperature ranges which it will encounter therein. The surface of the water in pools in outdoor primary enclosures shall be kept sufficiently free of solid ice when housing polar bears and ice dwelling species of pinnipeds so as to allow entry and exit of the animals. Water in pools in outdoor primary enclosures shall be kept free of ice when housing cetaceans and sea otters. No sirenian or warm water dwelling pinnipeds shall be housed in outdoor pools where water temperature cannot be maintained within the temperature range to meet their needs.

(b) *Shelter.* Natural or artificial shelter which is appropriate to the local climatic conditions for the species concerned, shall be provided for all marine mammals kept outdoors to afford them protection and to prevent discomfort to such animals due to weather conditions or to direct sunlight.

§ 3.104 Space requirements.

(a) *General.* Primary enclosures, including pools of water housing marine mammals, shall be constructed and maintained so as to provide sufficient space, both horizontally and vertically, and so as to allow each marine

mammal contained therein, to make normal postural and social adjustments with adequate freedom of movement, in or out of the water.

(b) *Cetaceans.* Primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water. In computing the minimum space requirements in a pool holding cetaceans, four factors must be considered. These are the MHD, the depth, the volume, and the surface area. For the purposes of this subpart, cetaceans have been divided into the following groups:

Group I cetaceans. This group shall consist of all cetaceans except those specified in Group II below.

Group II cetaceans. This group shall consist of the following genera and species of cetaceans.

Genera, Species and Common Name

Delphinus—all species— common dolphin.
Lissodelphis—all species—right whale dolphin.
Stenella—plagiodon—spotted dolphin.
Stenells—attenuata—spotted porpoise.
Stenella—coeruleoalba—blue-white porpoise (striped dolphin).
Stenella—Longirostris—spinner porpoise.
Phocoenoides—dalli—Dall's porpoise.

(1) *The required minimum horizontal dimension (MHD)* of a primary enclosure pool shall be based on the average adult body length of the longest species of cetacean housed therein. (i) The MHD of a pool for Group I cetaceans shall be two times the body length of an average adult of the longest species of cetacean to be housed therein, measured from the tip of its lower jaw to the notch in the tail fluke.[3] (ii) The MHD of a pool for Group II cetaceans shall be four times the body length of an average adult of the longest species of cetacean to be housed therein as measured from the tip of the lower jaw to the notch in the tail fluke. (iii) In a pool where a mixture of both group I and group II cetaceans are to be housed, the MHD must be computed on the basis of both the average adult length of the longest species of group I cetacean and of the longest species of group II cetacean, and the required MHD shall be either two times the body length of an average adult of the longest species of group I cetacean to be housed therein or four times the body length of an average adult of the longest species of group II cetacean to be housed therein, whichever is greater. (iv) The pool size may also be required to be adjusted to assure there is adequate surface area available to all cetaceans housed in a pool, and to increase the volume when more cetaceans are added to a pool. The pool size can be increased to allow for more surface area or volume, but cannot be less than the MHD requirement as stated in subparagraph (1), (ii), and (iii) of this paragraph. Examples of MHD for group I cetaceans are shown in table I, and for group II cetaceans in table II.

(2) *The minimum depth requirements* for primary enclosure pools for all cetaceans shall be one-half the body length of the average adult of the longest species to be housed therein, regardless of the group I or group II classification, or 1.52 meters (5 feet), whichever is the greater, and can be expressed as d=L/2 or 5 feet, whichever is greater.

(3) *Pool volume.* A pool of water housing cetaceans which satisfies the MHD for either group I or group II cetaceans and which meets the minimum depth requirements, and surface area requirements discussed in paragraph (b)(4) of this section, shall have a sufficient volume of water to hold either two group I cetaceans or four group II cetaceans. If additional cetaceans of the same group are to be added to a pool, or in case the pool is to hold a mixture of group I and II cetaceans, the volume, as well as the surface area, necessary for each cetacean (if mixed), or for each additional group I or II cetacean (if not mixed), must be satisfied. The additional volume needed shall be based on the number and kind of cetaceans housed therein and shall be determined in the following manner. (i) The minimum volume of water (space) required for the first one or two group I cetaceans is based upon the formula:

Volume=(2 × average adult length of the longest species of cetacean/2)^2 × 0 × depth

(½ body length or 5 feet, whichever is greater, or $V=L^2 \times 0 \times d$. Volume divided by two would equal the volume required for each additional cetacean of group I. The volume requirements for each additional group I cetacean, more than two, are given in Table I. (ii) The minimum volume of water (space) required to maintain as many as four group II cetaceans is based upon the following formula:

Volume=(4 × average adult length of the longest species of cetacean/2)^2 × 0 × depth

(½ body length or 5 feet, whichever is greater), or $V=2L^2 \times 0 \times d$. Volume divided by four would be the volume required for each additional group II cetacean. The volume requirements for each additional group II cetacean. The volume requirements for each additional group II cetacean are given in Table II. (iii) When a mixture of both group I and group II cetaceans are housed together, the MHD must be satisfied as stated in § 3.103(b)(1), and the minimum depth cannot be less than required in § 3.103(b)(2). If additional volume is required when more cetaceans are added, this may be done by enlarging the pool in its lateral dimensions or by increasing the depth to allow for the increased volume of water, but the surface area requirements discussed below must also be met.

(4) *The minimum surface area* requirements are computed for each cetacean housed in the pool, regardless of group I or group II classification, based upon the following formula:

Surface area=(average adult body length/2)^2 × 0 × 1.5, or SA=L/2 × 0 × 1.5.

Surface area requirements are given in table III.

[3]The body length of a *Monodon monoceros* (narwhal) is measured from the tip of the upper incisor tooth to the notch in the tail fluke. If the upper incisor is absent or does not extend beyond the front of the head, then it is measured like other cetaceans, from the tip of the lower jaw to the notch in the tail fluke. Immature males should be anticipated to develop the "tusk" (usually left incisor tooth) beginning at sexual maturity.

TABLE I*.—*Group I Cetaceans*

Average adult length		MHD		Minimum required depth		Volume of water required for each additional cetacean, exceeding two—	
Meters	Feet	Meters	Feet	Meters	Feet	Cubic meters	Cubic feet
1.83	6	3.66	12	1.52	5	8.00	282.60
2.13	7	4.27	14	1.52	5	10.89	384.65
2.44	8	4.88	16	1.52	5	14.22	502.40
2.74	9	5 49	18	1.52	5	17.99	635.85
3.05	10	6.10	20	1.52	5	22.22	785.00
3.66	12	7.32	24	1.83	6	38.39	1,356.48
4.27	14	8.53	28	2.13	7	60.96	2,154.04
4.88	16	9.75	32	2.44	8	90.99	3,215.36
5.49	18	10.97	36	2.75	9	129.56	4,578.12
6.10	20	12.19	40	3.05	10	177.72	6,280.00
6.71	22	13.41	44	3.36	11	236.55	8,358.68
7.32	24	14.63	48	3.66	12	307.11	10,851.84
7.92	26	15.85	52	3.96	13	390.46	13,797.16
8.53	28	17.07	56	4.27	14	487.67	17,232.30

*All calculations are rounded off to the nearest hundredth. In converting the length of cetaceans from feet to meters, 1 foot shall equal .3048 meter. Due to rounding of meter figures as to the length of the cetacean, the correlation of meters to feet in subsequent calculations of MHD and additional volume of water required per cetacean, over two, may vary slightly from a strict feet to meters ratio. Cubic meters is based on: 1 cubic foot = 0.0283 cubic meter.

TABLE II*.—*Group II Cetaceans*

Average adult length		MHD		Minimum required depth		Volume of water required for each additional cetacean, exceeding four—	
Meters	Feet	Meters	Feet	Meters	Feet	Cubic meters	Cubic feet
1.52	5	6.10	20	1.53	5	11.11	392.59
1.83	6	7.32	24	1.52	5	16.09	555.20
2.13	7	8.53	28	1.52	5	21.77	769.39
2.44	8	9.75	32	1.52	5	29.44	1,034.29
2.74	9	10.97	36	1.52	5	35.03	1,271.70
3.05	10	12.19	40	1.52	5	44.43	1,570.09

*Converting cubic feet to cubic meters is based on: 1 cubic foot = 0.0283 of a cubic meter.

TABLE III.—*Minimum Surface Area Required for Each Cetacean*

Average adult length of each cetacean		Surface area required for each cetacean		Average adult length of each cetacean		Surface area required for each cetacean	
Meters	Feet	Square meters*	Square feet	Meters	Feet	Square meters*	Square feet
1.52	5	2.73	29.44	4.27	14	21.44	230.79
1.83	6	3.94	42.39	4.63	16	23.09	391.44
2.13	7	5.36	57.70	5.49	18	35.44	331.51
2.44	8	7.00	75.36	6.10	20	43.76	471.09
2.74	9	8.86	95.33	6.71	22	52.94	569.91
3.05	10	10.94	117.75	7.32	24	63.01	678.24
3.35	11	13.24	142.48	7.92	26	73.95	795.69
3.66	12	15.75	169.56	8.53	28	85.76	923.16

*Square meter = square feet/9 × 0.8361.

(c) *Sirenians.* Primary enclosures housing sirenians shall contain a pool of water and may consist entirely of a pool of water. The minimum pool size requirements, for MHD, depth, and volume shall be calculated by using the same formulas as used for group I Cetaceans (table I) and surface area in table III, in paragraph (b) of this section, based on the average adult length of such sirenians as measured from the tip of the muzzle to the notch in the tail fluke of dugongs and from the tip of the muzzle to the most distal point in the rounded tail of the manatee. This size pool shall be adequate for one or two sirenians.

(d) *Pinnipeds.* (1) Primary enclosures housing pinnipeds shall contain a pool of water and a dry resting or social activity area that must be close enough to the surface of the water to allow easy access for entering or leaving the pool. (2) The minimum size of the dry resting or social activity area of the primary enclosure for pinnipeds (exclusive of the pool of water) shall be based on the average adult length of each pinniped contained therein, as measured in a horizontal or extended position in a straight line from the tip of its nose to the tip of its tail. The minimum size of the dry resting and social activity area shall be computed using the following method:

List all pinnipeds contained in a primary enclosure by average adult length in descending order from the longest species of pinniped to the shortest species of pinniped. Square the average adult length of each pinniped. Multiply the average adult length squared of the longest pinniped by 1.5, the second longest by 1.4, the third longest by 1.3, the fourth longest by 1.2, and the fifth longest by 1.1, as indicated below. Square the average adult length of the sixth pinniped and all additional pinnipeds. Add the figures obtained for all the pinnipeds in the primary enclosure to determine the required minimum dry resting and social activity area required for such pinnipeds.

1st pinniped (average adult length)^2 × 1.5 = resting and social activity area required.

2nd pinniped (average adult length)^2 × 1.4 = resting and social activity area required.

3rd pinniped (average adult length)^2 × 1.3 = resting and social activity area required.

4th pinniped (average adult length)^2 × 1.2 = resting and social activity area required.

5th pinniped (average adult length)^2 × 1.1 = resting and social activity area required.

Over 5 (average adult length)^2 × 1.0 = resting and social activity area required for each additional animal.

Total minimum dry resting and social activity area for all pinnipeds housed in a primary enclosure.

(3) The minimum surface area of a pool of water for pinnipeds shall be at least two-thirds of the total minimum dry resting and social activity area required for the pinnipeds contained therein. The pool of water shall be at least 0.91 meters (3 feet) deep or one-half the length of the longest pinniped contained therein, whichever is greater. Parts of the pool less than 0.91 meters (3 feet) deep cannot be used in the calculation of either the resting and social activity area or as part of the pool.

(e) *Polar bears.* Primary enclosures housing polar bears shall consist of a pool of water, a dry resting and social activity area, and a den. A minimum of 37.16 square meters (400 square feet) of dry resting and social activity area shall be provided for one or two polar bears, with an additional 3.72 square meters (40 square feet) of dry resting

and social activity area for each additional polar bear. The dry resting and social activity area shall be provided with enough shade to accommodate all of the polar bears contained in such primary enclosure at the same time. The pool of water shall be at least 2.44 meters (8 feet) by 3.66 meters (12 feet) with a minimum depth of 1.52 meters (5 feet), with the exception of any entry and exit area. This size pool shall be adequate for two polar bears. For each additional bear, the surface area of the pool must be increased by 3.72 square meters (40 square feet). The den shall be at least 1.83 meters (6 feet) in width and depth and not less than 1.52 meters (5 feet) in height. It will be so positioned that the viewing public shall not be visible from the interior of the den. A separate den shall be provided for each adult female of breeding age in the same primary enclosure.

(f) *Sea otters.* (1) Primary enclosures for sea otters shall consist of a pool of water and a dry resting area. The MHD of the pool of water for sea otters shall be at least twice the length of the average adult sea otter contained therein as measured from the tip of its nose to the tip of its tail and the pool shall be not less than 0.91 meters (3 feet) deep. When more than two sea otters are housed in the same primary enclosure, additional dry resting area as well as pool volume is required to accommodate the additional sea otters (table IV).

(2) The minimum volume of water required for a primary enclosure pool for sea otters shall be based on the average adult length of each sea otter contained therein, as measured from the tip of its nose to the tip of its tail. The minimum volume of water required in the pool shall be computed using the following method. Multiply the square of the length of the average adult sea otter by 0 (3.14) and multiply the total by 0.91 meters (3 feet). This volume is satisfactory for one or two sea otters. For more than two sea otters, multiply one-half of the square of the length of the third average adult sea otter, and each additional sea otter (when more than two), by 0 (3.14), then multiply by 0.91 meters (3 feet).

(3) The minimum dry resting area required for one or two sea otters shall be based on the average adult length of each sea otter contained therein, as measured from the tip of its nose to the tip of its tail. The minimum dry resting area for one or two sea otters shall be computed using the following method. Square the length of the average adult sea otter and multiply the total by 0 (3.14). When the enclosure is to contain three sea otters, the additional dry resting area for the third animal shall be computed as follows. Multiply one-half of the square of the average adult length of the third sea otter by 0 (3.14). If more than three sea otters are to be kept in a primary enclosure, obtain the sum of one-half of the square of the average adult length of each additional sea otter (starting with otter number 3), and multiply this sum by 0 (3.14). Additional dry resting and social activities area is given in table IV.

TABLE IV *.—*Additional Space Required for Each Sea Otter More Than Two in a Primary Enclosure*

Length of sea otter		Resting area		Pool volume	
Meters	Feet	Square meters	Square feet	Cubic meters	Cubic feet
0.91	3.0	1.30	14.13	1.18	42.39
1.07	3.5	1.80	19.23	1.64	57.70
1.22	4.0	2.34	25.12	2.13	75.36
1.37	4.5	2.95	31.79	2.68	95.38
1.52	5.0	3.63	39.25	3.30	117.75
1.68	5.5	4.43	47.49	4.03	142.48

* All calculations are rounded off to the nearest hundredth. A conversion factor of 1 foot equals .3048 meter is used in converting the length of the sea otter from feet to meters. Due to rounding of meter figures as to the length of the sea otter, the correlation of meters to feet in subsequent calculations of additional resting area and pool volume required per sea otter, more than two, may vary slightly from a strict feet to meter ratio.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

§ 3.105 Feeding.

(a) The food for marine mammals shall be wholesome, palatable, and free from contamination, and shall be of sufficent quantity and nutritive value to maintain all of the marine mammals in a state of good health. The diet shall be prepared with consideration for age, species, condition, size, and type of marine mammal being fed. Marine mammals shall be offered food at least once a day, except as directed by veterinary treatment or professionally accepted practices.

(b) Food receptacles, if used, shall be located so as to be accessible to all marine mammals in the same primary enclosure and shall be placed so as to minimize contamination of the food contained therein. Such food receptacles shall be cleaned and sanitized after each use.

(c) Food, when given to each marine mammal individually, shall be given by an employee responsible to management who has the necessary knowledge to assure that each marine mammal receives an adequate quantity of food to maintain it in good health. Such employee is required to have the ability to recognize deviations from a normal state of good health in each marine mammal so that the food intake can be adjusted accordingly. Public feeding shall be only permitted if it is done in the presence and under the supervision of an employee. Such employee must assure that the marine mammals are receiving the proper amount and type of food. Only food supplied by the facilities where the marine mammals are kept shall be fed to such mammals by the public.

(d) Food preparation and handling shall be conducted so as to minimize bacterial or chemical contamination and to assure the wholesomeness and nutritive value of the food. Frozen fish or other frozen food shall be stored in freezers which are maintained at a maximum temperature of −15° C (5° F). Thawing of the frozen food shall

be conducted in a manner which will minimize contamination and which will assure that the food retains nutritive value and wholesome quality. The thawed product shall be kept iced or refrigerated until a reasonable time before feeding. All foods shall be fed to the marine mammals within 24 hours following the removal of such foods from the freezers for thawing.

§ 3.106 Water Quality.

(a) *General.* The primary enclosure shall not contain water which would be detrimental to the health of the marine mammal contained therein.

(b) *Bacterial standards.* (1) The coliform bacteria count of the primary enclosure pool shall not exceed 1,000 MPN (most probable number) per 100 ml. of water. Should a coliform bacterial count exceed 1,000 MPN, two subsequent samples may be taken at 48-hour intervals and average with the first sample. If such average count does not fall below 1,000 MPN, then the water in the pool shall be deemed unsatisfactory.

(2) When the water is chemically treated, the chemicals shall be added so as not to cause harm or discomfort to the marine mammals.

(3) Water samples shall be taken and tested at least weekly for coliform count and at least daily for pH and any chemical additives (e.g. chlorine and copper) that are added to the water to maintain water quality standards. Records must be kept concerning when all such samples were taken and the results of the tests. Records of all such test results shall be kept for a 1-year period and must be made available for inspection purposes on request.

(c) *Salinity.* Primary enclosure pools of water shall be salinized for marine cetaceans and harp seals as well as for those other marine mammals which require salinized water for their good health and well-being. The salinity of the water in such pools shall be maintained within a range of 15-36 parts per thousand.

(d) *Filtration and water flow.* Water quality must be maintained by filtration, chemical treatment, or other means so as to comply with the water quality standards specified in this section.

§ 3.107 Sanitation.

(a) *Primary enclosures.* (1) Animal and food waste in areas other than the pool of water shall be removed from the primary enclosure at least daily, and more often when necessary to prevent contamination of the marine mammals contained therein and to minimize disease hazards.

(2) Particulate animal and food waste, trash, or debris that enter the primary enclosure pool of water shall be removed as often as necessary to maintain the required water quality and to prevent health hazards to the marine mammals contained therein.

(3) The wall and bottom surfaces of the primary enclosure pool of water shall be cleaned as often as necessary to maintain proper water quality.

(b) *Food preparation areas and food receptacles.* Containers, such as buckets, tubs, and tanks, as well as utensils, such as knives and cutting boards, or any other equipment which has been used for holding, thawing or preparing food for marine mammals shall be cleaned and sanitized after each feeding, if the marine mammals are fed once a day, and at least daily if the marine mammals are fed more than once a day. Kitchens and other food handling and preparation areas shall be cleaned at least once daily and sanitized at least once every week. Sanitizing shall be accomplished by washing with hot water (82° C, 180° F, or higher) and soap or detergent in a mechanical dishwasher, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with live steam.

(c) *Housekeeping.* Buildings and grounds, as well as exhibit areas, shall be kept clean and in good repair. Fences shall be maintained in good repair. Primary enclosures housing marine mammals shall not have any loose objects, sharp projections, and/or edges which may cause injury or trauma to the marine mammals contained therein.

(d) *Pest control.* A safe and effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained. Insecticides or other such chemical agents shall not be applied in a primary enclosure housing marine mammals except when deemed essential by an attending veterinarian.

§ 3.108 Employees.

A sufficient number of adequately trained employees shall be utilized to maintain the prescribed level of husbandry practices set forth in this subpart. Such practices shall be under the supervision of a marine mammal caretaker who has a background in marine mammal husbandry or care. Training of marine mammals shall be done by experienced trainers without physical punishment or abuse being used or inflicted upon the marine mammals.

§ 3.109 Separation.

Marine mammals which are not compatible shall not be housed in the same enclosure. Marine mammals shall not be housed near animals that would cause them stress or discomfort, or interfere with their good health. Captive marine mammals must be given access to other animals except when they are maintained in isolation for such purposes as medical treatment or training and given special attention.

§ 3.110 Veterinary Care.

(a) Programs of disease prevention, parasite control, euthanasia, and adequate veterinary care for all marine mammals shall be established and maintained under the supervision of an attending veterinarian.

(b) Marine mammals shall be observed daily by the person in charge of the care of the marine mammals or by someone working under his direct supervision. Sick or diseased, stressed, injured, or lame marine mammals shall be provided with adequate veterinary care or humanely destroyed, when necessary, unless such action is inconsistent with the research purposes for which the marine mammal was obtained and is being held.

(c)(1) In the case of a research facility, the program of adequate veterinary care shall include the appropriate use of anesthetic, analgesic, or tranquilizing drugs, when such use would be proper in the opinion of the attending veterinarian of the research facility. The use of these three classes of drugs shall be in accordance with currently accepted veterinary medical practice as cited in appropriate professional journals or reference guides which shall produce in the individual subject animal as high a level of tranquilization, anesthesia, or analgesia as is consistent with the protocol or design of the experiment.

(2) It shall be incumbent upon each research facility through its Animal Care Committee and attending veterinarian to provide guidelines and consultation to research personnel with respect to the type and amount of tranquilizers, anesthetics, or analgesics recommended as being appropriate for each species of marine mammals used by that institution.

(d) Newly acquired marine mammals shall be isolated from resident marine mammals until such newly acquired marine mammals can be reasonably determined to be in good health. Any communicable disease condition in a newly acquired marine mammal must be remedied before it is placed with other resident marine mammals.

(e) Any primary enclosure containing a marine mammal with an infectious or contagious disease shall be cleaned and sanitized in the manner prescribed by the attending veterinarian. No additional animals shall be introduced into the primary enclosure prior to such cleaning and sanitizing procedures. Any marine mammal exposed to a diseased animal shall be isolated for observation for an appropriate period of time as determined by the attending veterinarian.

(f) Temporary holding facilities with adequately and properly designed pools, tanks, restraining devices or primary enclosures shall be provided for isolation, medication, and treatment of marine mammals. The pools, tanks and primary enclosures may be less than minimum size in both lateral dimensions and depth when used in special situations when prescribed by the professional staff for temporary usage.

(g) A complete necropsy must be conducted by a veterinarian on all marine mammals that die in captivity. A necropsy report must be prepared by the veterinarian listing all pathologic lesions observed and giving the apparent cause of death. All diagnostic tests conducted on post mortem specimens shall be listed in the report, and the results of each test recorded. The management of the facility, at which the marine mammal died, must maintain these necropsy records for a period of 2 years and present them to the Department inspectors when requested.

§ 3.111 Handling.

(a) Handling marine mammals shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, overheating, behavioral stress, or physical harm. Care should also be exercised to avoid harm to the handlers of such marine mammals.

(b) Marine mammals, to which the public is afforded direct contact, shall only be displayed for periods of time and under conditions consistent with the animals' good health and well-being. A responsible attendant must be present at all times during periods of public contact.

(c) During public display, all marine mammals must be handled so that there is minimal risk of harm to the public or to the marine mammal, with sufficient distance allowed, or barriers placed between the marine mammal and the viewing public to assure safety to both the public and the marine mammal. Performing marine mammals shall be allowed a rest period between performances at least equal to the time for one performance.

TRANSPORTATION STANDARDS

§ 3.112 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers shall not accept any marine mammal presented by any person or by any department, agency, or instrumentality of the United States or of any State or local government for transportation, in commerce, more than 4 hours prior to the scheduled departure of the primary conveyance on which it is to be transported.

(b) Carriers and intermediate handlers shall attempt to notify the consignee immediately on arrival, and if unsuccessful, at least once every 4 hours following the arrival of any marine mammal at the animal holding area of the terminal cargo facility. The time, date, and method of notification to the consignee and the person notifying the consignee shall be noted on one of the documents accompanying the marine mammal.

§ 3.113 Primary enclosures used to transport marine mammals.

(a) Primary enclosures, which are used to transport marine mammals other than cetaceans and sirenians, shall (1) be constructed from materials of sufficient structural strength to contain the marine mammals; (2) be constructed from material that is durable, nontoxic, and cannot be chewed, and/or swallowed; (3) be able to withstand the normal rigors of transportation; (4) have interiors which are free from any protrusions that could be injurious to the marine mammals contained therein; (5) be constructed so that no parts of the contained marine mammals shall be exposed to the outside of the enclosures in such a way which may cause injury to the animals or to persons who are nearby or who handle the enclosures; (6) have openings which provide access into the enclosures which shall be secured with locking devices of a type which cannot be accidentally opened; (7) have such openings located in a manner which makes them easily accessible at all times for emergency removal of any live marine mammal contained therein; (8) have air inlets at heights which will provide cross ventilation at all levels (particularly when the marine mammals are in a prone position) and located on all four sides of the enclosures, and such ventilation openings shall be not less than 15 percent of the total surface area of each side of the enclosures; (9) have projecting rims or other devices placed on the ends and sides of any enclosures which have ventilation openings to provide a minimum air circulation space of 1.9 centimeters (0.75 inches) between the enclosures and any adjacent cargo or conveyance wall; and (10) be equipped with adequate handholds or other devices on the exterior of the enclosures which shall enable them to be lifted without unnecessary tilting and which will insure that the persons handling the enclosures will not come in contact with any marine mammal contained therein.

(b) Straps, slings, harnesses, or other devices, if used for body support or restraint, when transporting marine mammals such as cetaceans and sirenians shall (1) be designed so as not to prevent access to such mammals by attendants during transportation for the purpose of administering in transit care; (2) be equipped with special padding to prevent trauma or injury at critical weight pressure points on the body of the marine mammals; and (3) be capable of keeping the animals from thrashing about and causing injury to themselves or their attendants, and yet be adequately designed so as not to cause injury to the animals.

(c) Primary enclosures used to transport live marine mammals shall be large enough to assure that (1) in the case of polar bears and sea otters, there is sufficient space to turn about freely in a stance whereby all four feet are on the floor and the animal can sit in an upright position and lie in a natural position; (2) in the case of pinnipeds, each animal has sufficient space to lie in a natural position; and (3) in the case of cetaceans and sirenians, each animal has sufficient space for support of its body in slings, harnesses, or other supporting devices, if used (as prescribed in paragraph (b) of this section) without causing injury to such cetaceans or sirenians due to contact with the primary enclosure.

(d) Marine mammals transported in the same primary enclosure shall be of the same species and maintained in compatible groups. Marine mammals which have not reached puberty shall not be transported in the same primary enclosure with adult marine mammals other than their dams. Female marine mammals shall not be transported in the same primary enclosure with any mature male marine mammals.

(e) Before being used to transport marine mammals, primary enclosures, if previously used, shall be cleaned and sanitized in the manner prescribed for food preparation areas and food receptacles in § 3.107(b) of these standards.

(f) Primary enclosures used to transport marine mammals shall be clearly marked on the top and on one or more sides with the words "Wild Animal" in letters not less than 2.5 cm. (1 inch) in height, and with arrows or other markings, to indicate the correct upright position of the container.

(g) Documents accompanying the shipment shall be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment.

§ 3.114 Primary conveyances (motor vehicle, rail, air and marine).

(a) The animal cargo space of primary conveyances used in transporting live marine mammals shall be constructed in a manner which will protect the health and assure the safety and comfort of the marine mammals contained therein at all times.

(b) The animal cargo space shall be constructed and maintained in a manner which will prevent the ingress of engine exhaust fumes and gases in excess of that ordinarily contained in the passenger compartments.

(c) No marine mammal shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo spaces of primary conveyances in such a manner that each marine mammal contained therein shall have access to sufficient air for normal breathing.

(d) Primary enclosures shall be positioned in primary conveyances in such a manner that in an emergency the live marine mammals can be removed from the conveyances as soon as possible.

(e) The interiors of animal cargo spaces in primary conveyances shall be kept clean.

(f) Live marine mammals shall not knowingly be transported with any material, substance or device which may be injurious to the health and well-being of such marine mammals unless proper precaution is taken to prevent such injury.

§ 3.115 Food and water requirements.

(a) Those marine mammals which require drinking water shall be offered potable water within 4 hours prior to being transported in commerce or offered for transportation in commerce. Such marine mammals shall be watered as often as necessary and appropriate to the species involved to prevent excessive dehydration which would jeopardize the good health and well-being of the animals.

(b) Marine mammals shall not be transported for more than a period of 36 hours without being offered food. When an attendant is required to accompany a shipment of marine mammals, as provided in § 3.115 of these standards, such marine mammals shall be fed during transit when necessary to provide for their good health and well-being.

§ 3.116 Care in transit.

(a) An attendant or employee of the shipper or receiver of any marine mammal being transported, in commerce, knowledgeable in the area of marine mammal care, shall accompany cetaceans, sirenians, and sea otters during periods of transportation to provide for their good health and well-being, to observe such marine mammals and to determine whether they need veterinary care and to obtain any needed veterinary care as soon as possible. No cetacean or sirenian in need of veterinary care shall be transported in commerce, unless such transportation is for the purpose of obtaining such care.

(b) An attendant or other employee of the shipper or receiver of cetaceans or sirenians being transported, in commerce, shall provide for such cetaceans and sirenians during periods of transport by (1) keeping the skin moist with intermittent spraying of water or protecting it by applying a nontoxic emollient, such as lanolin, to prevent drying of the skin; (2) assuring that the pecoral flippers shall be allowed freedom of movement at all times; (3) making adjustments in the position of such marine mammals at 30-minute intervals to prevent necrosis of the skin at weight pressure points; and (4) calming such marine mammals to avoid struggling, thrashing, and other unnecessary activity which may cause overheating or physical trauma.

(c) One-half of the area in a primary enclosure used to transport sea otters shall be a dry area for resting and grooming, and the other half shall be a leakproof portion which shall contain sufficient crushed ice or water to provide each sea otter contained therein with moisture necessary to allow each sea otter to maintain its hair coat by preventing it from drying and to minimize soiling of the hair coat with urine and fecal material. No sea otter in need of veterinary care shall be transported in commerce, unless such transportation is for the purpose of obtaining such care.

(d) Polar bears and pinnipeds need not be accompanied by an attendant or other employee of the shipper or receiver, unless the period of transportation will exceed 12 hours in duration. During surface transportation, it shall be the responsibility of the carrier to inspect polar bears and pinnipeds unaccompanied by an attendant at least every 2 hours to determine whether they need veterinary care and to provide any needed veterinary care as soon as possible. When transported by air, live polar bears and pinnipeds, unaccompanied by an attendant, shall be inspected by the carrier at least every 2 hours if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the air carrier shall inspect such live unattended pinnipeds and polar bears whenever loaded and unloaded and whenever the animal cargo space is otherwise accessible to determine whether such unattended live animals need veterinary care, and the carrier shall provide any needed veterinary care as soon as possible. No polar bear or pinniped in need of veterinary care shall be transported in commerce, unless such transportation is for the purpose of obtaining such care.

(e) During the course of transportation, in commerce, live marine mammals shall not be removed from their primary enclosure unless it is necessary to place them into another primary enclosure or other facility, or unless an emergency situation arises making removal of marine mammals from the primary enclosure necessary.

§ 3.117 Terminal facilities.

(a) *Indoor facilities.* Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All live animal shipments shall be maintained in the same animal holding area of a terminal facility of any carrier or intermediate handler at any one time. All animal holding areas shall be cleaned and sanitized often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live marine mammals shall be provided with fresh air by means of windows, doors, vents, or air conditioning and shall be ventilated or have its air circulated by means of fans, blowers, or an air conditioning system in a manner that will minimize drafts, odors, and moisture condensation. The ambient temperature around any marine mammal shall not be allowed to exceed 29.5° C (85° F) at any time, nor to fall below 7.2° C (45° F), unless the marine mammal is an ice dwelling species and can tolerate temperatures below the stated minimum.

(b) *Outdoor facilities.* Carriers and intermediate handlers, in transporting, loading, and unloading, live marine mammals from indoor animal holding areas of terminal facilities to pri- mary conveyances and from primary conveyances to indoor animal holding areas of terminal facilities, shall provide the following:

(1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the marine mammals from the direct rays of the sun.

(2) *Shelter from snow.* Transporting devices shall be covered to provide protection for the marine mammals during snow, except to ice dwelling marine mammals which can tolerate cold weather conditions.

(3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for the marine mammals when the atmospheric or outdoor temperature falls below 10° C (50° F) unless the marine mammal is an ice dwelling species and can tolerate temperatures below the stated minimum.

§ 3.118 Handling.

(a) Carriers and intermediate handlers are responsible for moving live marine mammals from indoor animal holding areas of terminal facilities to primary conveyances and from primary conveyances to indoor animal holding areas of terminal facilities as expeditiously as possible.

(b) Care shall be exercised to avoid handling primary enclosures in a manner that may cause injury or stress to live marine mammals contained therein.

(c) Primary enclosures housing live marine mammals shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may result in their falling.

§ 3.119 Ambient temperature within primary enclosures.

The ambient temperature or the temperature surrounding the animal within the primary enclosure used to transport live marine mammals shall not exceed 29.5° C (85° F) for a period of more than 45 minutes and shall not fall below 7.2° C (45° F) for a period of more than 45 minutes unless the person transporting such live marine mammals knows that such live marine mammals are acclimated to lower or higher temperatures.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 703, Hyattsville, Md., during regular hours of business (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

Done at Washington, D.C., this 14th day of September 1978.

NOTE.—The Department has determined that this document does not contain a major requirement preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107. However, an economic impact statement has been drafted and a copy of said draft statement may be obtained by writing to the Deputy Administrator, USDA, APHIS, VS, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782.

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc. 78-26289 Filed 9-14-78; 2:53 pm]

TUESDAY, SEPTEMBER 19, 1978
PART VIII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

■

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Environmental Review Procedures

Federal Register

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[24 CFR Part 58]

[Docket No. R-78-572]

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Environmental Review Procedures; Proposed Amendments and Revision

AGENCY: Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is soliciting comments on proposed amendments to the environmental review responsibilities of community development block grant applicants who apply for funds under title I of the Housing and Community Development Act of 1974, as amended (the Act). The changes proposed would require the applicant to use HUD or HUD approved formats in its various environmental review procedures, and provide HUD the option of commenting on the applicant's environmental review process as well as the environmental quality of individual projects. Other changes would exempt certain activities from environmental review, clarify the circumstances when a prior environmental review may be used in connection with a proposed community development block grant action, and establish a system of flexible thresholds for automatically requiring an EIS. These changes are developed to address the need for changes in the review procedures that have become apparent from the operation of the program over the last several years.

COMMENTS DUE: October 19, 1978.

ADDRESS: Comments should be addressed to: Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard H. Broun, Office of Environmental Quality, Room 7258, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410; telephone 202-755-6308.

SUPPLEMENTARY INFORMATION: The changes proposed in this notice have been developed to address the need for changes in the environmental review procedures for the community development block grant program that have become apparent from the program's operation over the last several years. In part, the proposed changes are the result of suggestions received from an advance notice of proposed rulemaking which was published in the FEDERAL REGISTER on May 16, 1977. Additional suggestions for amendments to the regulations resulted from the HUD audit carried out by the Office of Inspector General in 1975 and 1976, an audit performed by the General Accounting Office (GAO) in 1977, and a report issued by the Council on Environmental Quality (CEQ) in 1977. The general operating experiences of HUD staff at headquarters, regional, and field levels have also been incorporated into the proposed amendments in order to make them more consistent with the environmental review procedures for other HUD programs. The changes proposed in these regulations have been the subject of consultation with the Council on Environmental Quality as required by section 104(h) of the Act. The intent of the proposed changes and the major issues involved are as follows:

AUTHORITIES AND RESPONSIBILITIES

The basic authorities listed in § 58.1(a)(3) have been revised to include Executive Orders 11990 on wetlands, and 11988 on floodplain management, both issued on May 24, 1977, Safe Drinking/Water Act of 1974 and the Endangered Species Act of 1973. A new § 58.23 contains provisions for complying with the Executive orders on wetlands and floodplain management.

Section 58.5 has been revised to make it clear that applicants' responsibilities include compliance with applicable laws and regulations pertaining to historic preservation and archeology as well as the recently issued Executive orders relating to flood-plain management and wetlands. Section 58.5(b)(3) has been amended to clarify that under section 104(h) of the Act HUD can delegate the environmental review responsibility only to units of general purpose government.

EXEMPTIONS OF ACTIVITIES FROM ENVIRONMENTAL REVIEW

A substantial number of commenters recommended that HUD expand the number of exempt activities presently listed in § 58.21. The most significant activities recommended for exemption were: Reconstruction or improvement of existing facilities, rehabilitation, land acquisition, recreation facilities, playgrounds, parks, social service type projects, engineering and design costs, and emergency demolition and repair projects. A few commenters recommended exempting all activities except new construction. Six commenters recommended that projects below a certain cost be exempt.

In addition to comments in response to HUD's notice, studies by CEQ, GAO, and HUD as well as the program experience of HUD personnel have shown that certain kinds of eligible block grant activities are such that they do not involve environmental consequences which significantly affect the quality of the human environment. The current regulations require the block grant applicant to complete the requirements of part 58, including the time periods for comments and the release of funds for all activities.

After extensive analysis, including consultation with the Council on Environmental Quality, HUD proposes to amend § 58.21 to provide certain exemptions from environmental review procedures.

Accordingly, environmental studies, planning and design, administration, payments of urban renewal project loans, and payments for notes guaranteed under section 108 of the Act may be exempt from environmental review procedures. In addition, projects consisting solely of acquisition, construction, reconstruction, or installation of certain types of public facilities; interim assistance, single purpose grants in the small cities program for imminent threat to public health or safety; certain types of public services; and certain types of rehabilitation of buildings which meet specific criteria are exempt from the environmental review process. However, projects in this second category must comply as appropriate with other separate statutes and regulations such as the National Historical Preservation Act.

PROJECTS REQUIRING AN ENVIRONMENTAL IMPACT STATEMENT

Several sources indicated a need for HUD to provide more indicators of projects likely to be environmentally significant. HUD proposes to expand § 58.25 to reclassify those additional projects which because of their size or scale are automatically deemed to be major Federal actions significantly affecting the quality of the human environment and, therefore, requiring preparation of an EIS. The automatic thresholds in this section augment and do not replace qualitative factors which may lead an applicant, under § 58.15, to conclude that an EIS is required.

Section 58.25(a) establishes a system of variable EIS thresholds applicable to various types of housing actions. The threshold system is the same as HUD is proposing for its housing programs. The thresholds relate to certain projects which would remove, demolish or substantially rehabilitate existing housing, or provide sites for

housing. For such projects located in non-SMSA counties, and for projects in SMSA counties but outside a defined "urbanizing belt", the threshold is 500 units. For projects located within the "urbanizing belt", the thresholds vary from 500 to 2500 units depending upon the total population of the SMSA county itself. The variable thresholds are presented in table 1. They are being made applicable to other HUD programs and replace a single threshold of 500 units which HUD concluded did not distinguish among the size, population, or density of development characteristics of various project areas in the United States and which did not recognize differences in the local ability to absorb and serve new or changed development.

Section 58.25(b) states that in calculating the threshold for projects which provide sites for hospitals and nursing homes, the term "bed" shall be substituted for "housing units".

A new § 58.25(c) has been provided to correct some of the confusion which has ensued from the application of the 100 acre threshold for water and sewer projects in the 1975 version of § 58.25(b) and to link this threshold with the residential threshold in § 58.25(a). In general, the new language provides that, where a new or enlarged water or sewer line provides additional capacity which would permit undeveloped or partially developed land to absorb new residential and/or nonresidential development, the amount of new development shall be applied to the thresholds of § 58.25(a) to determine whether an EIS will be required. The threshold will be calculated by the standard flows per unit and the increase in flow converted to the number of housing units.

USE OF PRIOR ENVIRONMENTAL REVIEWS

Section 58.19 has been retitled and amended to cover various circumstances when, in consideration of a proposed project level action, a prior environmental review may be used. The conditions under which a prior environmental impact statement may be used in lieu of a new EIS are completely rewritten and moved from § 58.19(c) to § 58.19(b). The new subsection is identical to proposed HUD environmental regulations applicable to programs other than CDBG.

COMPREHENSIVE AND EARLY EVALUATION

Several sources indicated that a proliferation of environmental reviews of individual activities has occurred in some CDBG localities. As a result environmental workload has increased, but the quality of the reviews has been inadequate because they were narrowly focused. Reviews often have had little relationship to local decisions about project selection and design. Therefore, HUD has supplied separate definitions of "project" and "activity" at § 58.3 and has considerably amplified the guidance on timing of review and on cumulative impact and aggregation at §§ 58.5 and 58.15.

HUD RECEIPT AND REVIEW OF EIS'S

Current regulations on the distribution of applicant EIS to Federal agencies do not provide for furnishing a copy to HUD. this exception has made it difficult for HUD to monitor, provide technical assistance, and improve environmental performance in the localities whose projects most significantly affect the environment. HUD now proposes to receive and review CDBG EIS's in the same manner as other Federal agencies. HUD may critique the actions of the applicant and make recommendations for modifications of proposed actions or for consideration of alternative activities. This revision is responsive to comments of the Council on Environmental Quality. Appropriate revisions have been made at §§ 58.17 and 58.27.

APPLICANT-INTERACTION WITH HUD

A new subsection has been added to § 58,27. The new material describes HUD's role in commenting on or otherwise responding to the environmental review process of applicants, and is responsive to comments received from the Council on Environmental Quality (CEQ) and the General Accounting Office (GAO). It specifies that HUD may notify the applicant of defects in its environmental actions and make recommendations for correction. Such a notification will place the applicant on notice that a request for release of funds and certification of the applicant may be rejected by HUD, unless the defect is remedied to HUD's satisfaction. This revision will also clarify HUD's new role in EIS review.

REQUIRED USE OF HUD FORMATS

The poor quality of the Environmental Review Record (ERR) prepared and maintained by many CDBG applicants has been the subject of comment from the Council on Environmental Quality, the General Accounting Office, HUD's own auditors, HUD field staff, and from non-Federal sources. ERR's have been cited as omitting significant information and procedural steps needed to demonstrate that an environmental review adequate to comply with this part has been performed. Therefore, HUD has revised § 58.11 to require that applicants use the format contained in HUD-399-CPD, Environmental Reviews at the Community Level, or such other format as may be acceptable to HUD. The description of the project, which has often been defective in the ERR, will now have to include basic elements prescribed by HUD.

The use of HUD formats or other formats acceptable to HUD for findings of no significant effect on the environment, notices of intent to file an EIS, and notices of intent to request release of funds will be required. This revision is responsive to comments which indicated that local practice has frequently produced inadequate information. Appropriate revisions have been made in §§ 58.16, 58.17, and 58.30.

TIME PERIODS

Several commenters recommended that all time periods be counted by calendar days. Section 58.2 has been revised accordingly. The change simplifies the counting of days.

COMBINING OF NOTICE PERIODS

Thirty-two commenters recommended that the 15-day notice of finding of no significant effect and the 5-day notice of intent to request release of funds be combined. This has been accomplished by a change which permits the applicant to publish the two notices together. The period for the notice of intent to request release of funds has been changed from 5 business days to seven (7) calendar days. The periods for the two notices may run concurrently. Thus, at the end of the 15-day period for comment on the notice of finding of no significant effect, the applicant, if its funding is unchallenged, may request the release of funds.

PUBLICATION AND DISSEMINATION OF NOTICES

In response to complaints that notices have been placed in obscure and little read legal or commercial journals, § 58.17(b) has been revised to indicate that a notice of intent to request release of funds and notice of finding of no significant effect must be published at least once in a newspaper which is a source of general news used by the general public or published in some other manner most likely to inform residents.

PERMISSIBLE BASES FOR OBJECTING TO RELEASE OF FUNDS

The bases for objections to the request for release of funds are currently procedural only. Part 58.31 has been amended to allow HUD to reject an applicant's release for funds for a project which HUD determines to have a defective environmental review process or to be environmentally unsound. Other Federal agencies may submit a finding to HUD that an applicant's project is environmentally unsound.

CERTIFYING OFFICER OF APPLICANT

Several commenters recommended that provision be made for delegating signature authority for purposes of environmental reviews and release of funds. HUD recognizes that for a multiactivity CDBG program signatures by the chief executive officer may be required with unnecessary frequency. Therefore a definition of "Certifying Officer of Applicant" has been supplied at § 58.3, and this officer is cited at relevant places in the revised regulation.

The Department wishes to solicit comment on changing § 58,17 to require at least one public hearing for an Environmental Impact Statement. The present regulations in § 58.17 (c) and (d) state that the applicant shall determine whether or not it will conduct a hearing or hearings and include the procedures and factors to be considered if a hearing is held. There has been comment that the optional nature of the public hearing does not provide for needed public input in the environmental review process and that requiring at least one public hearing on an EIS would result in better public review and comment. In commenting, the reader should be conscious of the relationship between the environmental procedures and the regulations for the CDBG program which require at least two public hearings prior to application submission. The Department will evaluate all comments received and shall make any needed adjustments in the final regulation.

* * * * *

With respect to the above proposed amendments, interested persons are invited to participate in the making of the final rule by submitting written comments or views on the proposed amendments. To facilitate HUD's review of written comments, reviewers are requested to clearly identify the amendment to which the comments are addressed. Comments should be filed with the Rules Docket Clerk, Room 5216, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All relevant comments received on or before the date specified above will be considered before adoption of the final rule. Copies of comments will be available for examination during business hours at the above address.

A finding of inapplicability with respect to environmental impact has been prepared in accordance with the Department's environmental procedures. A copy of this finding is available for inspection and copying in the Office of the Rules Docket Clerk at the above address.

* * * * *

Accordingly, HUD proposed to amend and revise Title 24, Part 58 to read as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Subpart A—General Policy and Responsibilities

Sec.
58.1 Purpose and authority.
58.2 Time periods.
58.3 Terminology.
58.4 [Reserved]
58.5 General policy.
58.6 [Reserved]

Subpart B—Environmental Reviews by Applicants Under Title I

58.7 [Reserved]
58.8 [Reserved]
58.9 Financial assistance for environmental review.
58.10 [Reserved]
58.11 Evironmental review record.
58.12 [Reserved]
58.13 [Reserved]
58.14 [Reserved]
58.15 Steps to commence environmental review process.
58.16 Steps to complete environmental review process where level of clearance finding is that the request for release of funds for project is not an action which may significantly affect the environment (no EIS).
58.17 Steps to complete environmental review process where level of clearance finding is that the request for release of funds is an action which may significantly affect the environment (EIS required).
58.18 Limitation on action pending clearance.
58.19 Use of prior environmental reviews.
58.20 Financial settlements of urban renewal projects.
58.21 Exempt activities.
58.22 [Reserved]
58.23 Floodplains and wetlands.
58.24 Historic preservation.
58.25 Projects requiring an EIS.
58.26 [Reserved]
58.27 Interaction of applicant with HUD and Federal agencies.
58.28 [Reserved]
58.29 [Reserved]

Subpart C—Releases of Funds for Particular Projects

58.30 Release of funds upon certification.
58.31 Objections to release of funds.
58.32 Effect of approval of certification.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Policy and Responsibilities

§ 58.1 Purpose and authority.

(a) *Authority*—(1) *Basic law.* The National Environmental Policy Act of 1969 (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (hereinafter "NEPA") establishes national policy, goals, and procedures for protecting and enhancing environmental quality. NEPA, as implemented by Executive Order 11514 and the Guidelines of the Council on Environmental Quality, 40 CFR Part 1500 (hereinafter "CEQ," as to the Council, and "CEQ Guidelines") requires in section 102(2)(c), in addition to other responsibilities, that all agencies of the Federal Government prepare detailed environmental impact statements on proposals for major Federal actions significantly affecting the quality of the human environment.

(2) *Section 104(h) of title I (of the Housing and Community Development Act of 1974* (Pub. L. 93-383, 42 U.S.C. 5301 et seq.) (hereinafter "section 104(h)" and "Title I" respectively) authorizes a procedure under which applicants with approved applications for assistance under Title I assume for specific projects the environmental review and decisionmaking responsibilities that would apply to the HUD Secretary were he to undertake such projects as Federal projects. The procedure eliminates the necessity for Federal environmental impact statements at the time of the initial application. At the same time, however, the procedure is intended to assure that NEPA policies and protection of the environment continue undiminished. Under the procedure applicants are to certify prior to any commitment of Title I funds for particular projects (other than funds for general planning or environmental study purposes) that they have met all of their environmental responsibilities in accordance with regulations issued by HUD Secretary, after consultation with CEQ. Approval of such certification by the Secretary under section 104(h) discharges the responsibilities he may otherwise have had under NEPA with respect to the specific projects covered by the certification. The Secretary is to wait 15 days after receipt before acting upon such a certification, thus giving those who may wish to challenge a certification an opportunity to take appropriate action. That challenge can include suit against the certifying officer or applicant who for purposes of enforcing NEPA has consented to accept the jurisdiction of the Federal courts. Such challenge may also include a request that the Secretary reject the certification. The Secretary will consider a request for rejection of the certification only if such request is grounded on certain bases, as set forth in § 58.31(b). Under section 104(h) cities, counties and other units of general local government assume only those responsibilities which would apply if the HUD Secretary were to undertake the projects proposed for assistance as Federal projects. Thus, these regulations neither expand nor

contract the categories of actions that would be subject to environmental identification and review procedures.

(3) *Other applicable authority.* The environmental review process must also take into account, where applicable, the criteria, standards, policies and regulations under the subsections below. The process should also consider the relationship of a project funded under Title I and the requirements of these authorities, to anticipated requests for other Federal assistance, particularly housing, to which these authorities may apply. An explanation of how these authorities are taken into account and considered shall be documented in the environmental review record prior to the applicant's submission of the certification and request for release of funds required by § 58.30.

(i) *Historic properties.* The National Historic Preservation Act of 1966 (Pub. L. 89-665); Preservation of Historic and Archeological Data Act of 1974 (Pub. L. 93-291) and regulations which may hereafter be issued; Executive Order 11593, Protection and Enhancement of the Cultural Environment, 1971; Procedures for Protection of Historic and Cultural Properties, Advisory Council on Historic Preservation, 36 CFR Part 800.

(ii) *Noise.* HUD Handbook 1390.2, Noise Abatement and Control, Department Policy, Responsibilities and Standards, 1971.

(iii) *Flood plain.* Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and implementing regulations; Title 24, Chapter X, Subchapter B, National Flood Insurance Program; and Executive Order 11988.

(iv) *Coastal zones and wetlands.* Coastal Zone Management Act of 1972 (Pub. L. 92-583), Executive Order 11990 and applicable State legislation or regulations.

(v) *Air quality.* Clean Air Act (Pub. L. 90-148), as amended; and applicable U.S. Enviromental Protection Agency implementing regulations.

(vi) *Water quality.* Federal Water Pollution Control Act (Pub. L. 92-500), section 1424(e) of the Safe Drinking Water Act of 1974 (Pub. L. 93-523) and applicable U.S. Environmental Protection Agency implementing regulations.

(vii) *Wildlife.* Fish and Wildlife Coordination Act (Pub. L. 85-624).

(viii) *Endangered species.* The Endangered Species Act of 1973 (Pub. L. 93-205) and as applicable Department of the Interior and Department of Commerce implementing regulations.

(b) *Purpose.* These regulations implement the requirements of section 104(h), which is intended to assure that the policies of NEPA are most effectively implemented in connection with the expenditure of funds under Title I, and to assure to the public undiminished protection of the environment. The policies of NEPA, in addition to other responsibilities set out in section 2 and Title I of NEPA, require the use of all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

§ 58.2 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time of the first day following the action which initiates it.

§ 58.3 Terminology.

For the purposes of this part, the following terminology shall apply:

Actions which may significantly affect the quality of the human environment. Those actions for which section 102(2)(c) of NEPA would require the preparation of an environmental impact statement (EIS). Applicants assuming NEPA responsibilities pursuant to Title I and these regulations shall review each project proposed for fund release under Title I in accordance with the environmental review process described in these regulations in order to determine whether the applicant's request to HUD for the release of Title I funds would constitute an action, were the applicant a Federal agency, which may significantly affect the quality of the human environment.

Applicant. The applicant is the State or unit of general local government which makes application pursuant to the provisions of subpart D or subpart E of 24 CFR Part 570. One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake a community development program in whole or in part, but only the State or unit of general local government may be the applicant under the subparts cited above, and under this Part 58. Upon execution of its grant agreement with HUD, an applicant becomes a "recipient" under 24 CFR Part 570. As used in this Part 58, the term "applicant" includes "recipient" under Part 570, where the context so requires.

Certifying officer. The term "certifying officer" means the chief executive or another officer of the applicant authorized, in accordance with applicable local law, to execute the certification and request for release of funds specified at § 58.30, to consent to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969, and to consent on behalf of the applicant to accept the jurisdiction of the Federal courts for the enforcement of NEPA responsibilities as such official.

Environmental impact. Any alteration of exiting environmental conditions, or creation of a new set of environmental conditions, adverse or beneficial, caused or induced in whole or in part, directly or indirectly, by a proposed project under Title I.

Environmental impact statement (EIS). A written statement, propared in accordance with NEPA and CEQ guidelines using such format as may be acceptable to HUD, describing any atleration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action or set of actions under consideration, and the alternatives to such action or group of actions. The statement should include a quantitative measure of magnitude and a qualitative measure of importance of the environmental impacts.

Environmental review and environmental review process. The entire process for compliance by the applicant with NEPA under this part with respect to a project funded under Title I.

Level of clearance finding. The applicant's determination pursuant to § 58.15(d) as to which of the two levels of environmental clearance applies.

Activity. As used in this part, "activity" means both those actions funded or authorized to be funded with Title I assistance and those related actions which are not so funded or not authorized to be so funded. In the context of environmental review, it is not the source of funds for an activity, but the nature of the activity and its relationship to other activities which is relevent. Where the term "eligible activity" is used in this part, it means an activity which is eligible for Title I as-

sistance pursuant to 24 CFR parts 570 and 571.

Project. The term "project", as used in this part, means an activity or a group of integrally related activities, designed by the applicant to accomplish, in whole, or in part, a specific goal. Geographically or functionally related activities designed to accomplish a specific goal, irrespective of the funding sources of those activities, shall be grouped together for consideration as a single project. Because of the interrelationships of the activities comprising the project, the project as a whole shall be subject to a single environmental review in accordance with this part. A project may take a number of years to complete and may require funds in addition to the amount provided in a single program year.

SMSA. A standard metropolitan statistical area as defined by the Office of Management and Budget.

SMSA county. Within a SMSA, a county or county equivalent as listed in the P-25 series, population estimates and projections, published by the Bureau of the Census.

Urbanizing belt. Urbanizing belts are identified as the delineated urbanized areas, as defined by the Bureau of the Census, plus a two-mile zone around the outer boundaries of such areas. In cases where this two-mile zone borders or includes a portion of an incorporated place lacking census tracts, or, when the two-mile zone borders or includes a portion of a census tract, the next outer boundary of such incorporated place or census tract may be used to delineate the outer limit of the urbanizing belt. In no case shall the urbanizing belt extend beyond the SMSA boundary.

Urban renewal project. A project as defined in § 110(c) of the Housing Act of 1949, as amended, or a neighborhood development program as defined in § 131(b) of the Housing Act of 1949, as amended.

Substantial completion. As applied to an urban renewal project, this term means that:

(i) Ninety percent (90%) or more of site improvement work has been completed and the remainder is under contract;

(ii) Ninety percent (90%) or more of demolition work has been completed and the remainder is under contract;

(iii) Relocation of all occupants of at least ninety-eight percent (98%) of the housing units in the relocation workload, or of all but five (5) such housing units, whichever is the lesser, has been completed;

(iv) Relocation for at least ninety-five percent (95%) of all cases in the nonresidential relocation workload, or for all but ten (10) such cases, whichever is the lesser, has been completed;

(v) At least ninety percent (90%), by estimated cost, of all relocation payments have been made;

(vi) With respect to each park, playground, public building or other public facility to be provided as a noncash local grant-in-aid:

A. All land necessary for the provision thereof has been conveyed to or is in the ownership of the providing entity or is covered by an unconditional purchase, or similar, agreement,

B. All necessary planning agency or other public body approvals have been obtained,

C. All, or virtually all, of the funds necessary for the provision thereof have been authorized by the governing body of the providing entity and all and any necessary bond referendums or other public approvals have been obtained,

D. Complete working drawings and specifications have been prepared for the construction thereof and firm supportable estimates of the costs incident to provision thereof have been developed, and

E. A firm assurance exists of timely completion and, in any event, of completion within five (5) years from the date of the assurance;

(vii) With respect to dwelling units not to be demolished, at least ninety-five percent (95%) comply with applicable codes and at least seventy-five percent (75%) comply with applicable property rehabilitation standards established for the urban renewal project: *Provided,* that in any event, project activities may be deemed complete in regard to dwelling units not to be demolished where the following conditions exist:

A. Area decline has been arrested and stability and self-generating renewal assured,

B. Public facilities and services have been, and will continue to be, provided to support continued stability,

C. Local financial institutions are making property loans in the area, and

D. The community will continue an adequate level of code enforcement activities in the area;

(viii) All project land acquisition has been completed; and

(ix) An amount equal to the HUD approved land disposition value of all acquired project land has been credited to the urban renewal project account(s): *Provided,* that for all project land actually sold, the full sale price thereof shall be so credited and for all leased or unsold project land, the full amount of the HUD approved estimate of the disposition value thereof shall be so credited from community development block grants or local funding sources.

§ 58.4 [Reserved]

§ 58.5 General policy.

(a) *Applicants to assume environmental responsibilities.* Except as provided at paragraph (b) of this section, all applicants for assistance under Title I shall be required to assume responsibility for carrying out all of the provisions of NEPA relating to particular projects for which the release of funds is sought. This shall include assuming all applicable responsibilities relating to such projects for compliance with the National Historic Preservation Act of 1966, as amended; the Preservation of Historic and Archeological Data Act of 1974, as amended; Executive Order 11593, May 13, 1971, Protection and Enhancement of the Cultural Environment; Procedures for Protection of Historic and Cultural Properties, Advisory Council on Historic Preservation, 36 CFR Part 800; Executive Order 11988, May 24, 1977, relating to Floodplain Management; Executive Order 11990, May 24, 1977, relating to Protection of Wetlands; Section 1424(e) of the Safe Drinking Water Act of 1974; the Endangered Species Act of 1973; and other regulations and orders issued relative to any of the foregoing. In assuming such responsibility, the applicant's certifying officer shall carry out the responsibilities of the "responsible Federal official" as that term is used in NEPA and applicable regulations thereunder. Such responsibilities include, where applicable, the conduct of environmental reviews; decisionmaking and action as to environmental issues; preparation and circulation of draft and final EIS's; and assumption of lead agency responsibilities for preparation of such statements in behalf of Federal agencies when such agencies consent to such assumption. The certifying officer shall be subject to the jurisdiction of the Federal courts pursuant to section 104(h); such certifying officer of the applicant shall not be represented by the Department of Justice in court, but reasonable defense costs, including the fees of attorneys and experts, incurred in environmental litigation may be funded from the applicant's grant amounts.

The carrying out of all environmental review responsibilities shall be documented in the environmental review record prior to the applicant's submission of the certification and release of funds required by § 58.30.

The certification described at § 58.30 must be submitted to HUD by the applicant prior to the release of funds for any such project as evidence of the assumption of the responsibilities set forth above.

(b) *Exception.* (1) Each applicant shall, prior to submitting an application, review its legal capacity to

assume and carry out the environmental responsibilities hereunder. If an applicant believes it may lack legal capacity to assume and carry out environmental review responsibilities hereunder, then it shall submit to the HUD official authorized to receive the application the legal opinion of its attorney in support of such claim and shall consult with said HUD official in order to obtain appropriate instructions. Such claim shall be made prior to submitting an entitlement or discretionary application. Discretionary applicants shall submit such claim to HUD with the preapplication, if a preapplication is required. HUD will review such claim and approve or disapprove it.

(2) If an applicant's claim of lack of legal capacity has been approved by HUD, then HUD will complete an environmental assessment, including an EIS if appropriate, pursuant to HUD Handbook 1390.1, as amended, before the application is approved, or in those cases where a preapplication is required, before the applicant is invited to submit a full application.

(3) Community associations, other applicants which are eligible for assistance pursuant to 24 CFR section 570.403(b)(4) unless such applicant is also described in the first sentence of 24 CFR section 570.3(v), and private developers approved under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the HUD Act of 1968, are considered by HUD to lack the legal capacity to assume or carry out environmental review responsibilities.

(c) *Environmental review process.* The environmental review process consists of a study by the applicant of each project to identify any environmental impacts of actions proposed to be taken by the applicant which are to be supported, in whole or in part, by Title I funds.

(d) *Determination of impact.* In the environmental review process, the applicant must arrive at a determination as to whether or not any proposed project will result in any environmental impact; or will itself be affected by the environment; the nature, magnitude and extent of any such impact; whether or not any changes could be made in the project as proposed, or alternatives to such project could be adopted, to eliminate or minimize adverse impacts; and the level of environmental clearance which is appropriate. Such determination is largely a matter of judgment on the part of the applicant, involving evaluation of available facts, pursuant to the procedures and guidelines contained in this part.

(e) *Conditions and safeguards.* If the applicant's environmental review process reveals conditions or safeguards which should be implemented when the project is undertaken, in order to protect or enhance environmental quality or minimize adverse environmental impacts, then such conditions or safeguards shall be set forth in the environmental review record and the applicant shall use all appropriate means to assure that those conditions and safeguards are implemented.

(f) *Decision not to implement.* If, through the environmental review process, the applicant concludes that the proposed project should not be implemented in whole or in part, then the applicant may reprogram to another eligible project, in accordance with the applicable provisions of 24 CFR 570.305.

(g) *Scope and timing of environmental reviews.* Applicants shall carry out their environmental review responsibilities for projects as defined at § 58.3 in accordance with the following:

(1) *Timing.* To the greatest extent possible, the environmental review of proposed projects shall be carried out concurrently with the formulation of the applicant's community development program and the preparation of the application for Title I funds. Environmental review shall commence at the earliest possible point in the development of a project. When a project is formulated, it shall be reviewed for environmental considerations in order to identify and evaluate expected or potential environmental impacts, to devise changes and modifications to eliminate or mitigate adverse impacts, and to explore alternatives. By developing and carrying out its environmental review as part of the overall program and application formulation process, the applicant can considerably shorten the time between program development and program implementation.

(2) *Cumulative impact and aggregation.* The cumulative effects of related actions must be considered together. Activities which are individually small may, in the aggregate, have cumulatively large effects on the environment, especially when a number of such activities will take place at or about the same general time and in the same general location. Also, a series of actions taking place over extended periods of time can, in the aggregate, have a cumulative effect upon the environment much greater than the effect of each individual action considered separately. All individual actions which are related either geographically or functionally, or are logical parts of a composite of contemplated actions, shall be grouped and shall be deemed by the applicant to be a project and must be evaluated as a whole in a single, comprehensive environmental review. The environmental review of a multi-year project shall encompass the entire multi-year scope of activities and shall not be limited to those activities scheduled for any given year. This subsection applies to all projects and activities, except that for exempt activities defined at § 58.21(a) the applicant may, but is not required to, apply these aggregation requirements.

(3) *Illustrations.* Where an applicant proposes to acquire a parcel of land, relocate its occupants, clear the site by demolition, then develop the site, or dispose of it for development by others, then all of these activities must be viewed as comprising a single project, for purposes of environmental review. Where an applicant proposes to undertake a number of small activities, such as street, water, and sewer improvements in a given neighborhood, the applicant shall aggregate all such geographically or functionally related activities and view them as a single project for environmental review purposes and shall evaluate their cumulative environmental impact. This applies even if the activities are to occur over a period of years and even if some of the activities are to be funded by other than Title I funds or carried out by someone other than the applicant.

§ 58.6 [Reserved]

§ 58.7 [Reserved]

§ 58.8 [Reserved]

§ 58.9 Financial assistance for environmental review.

Applicants may utilize Federal financial assistance to enable them to carry out environmental review pursuant to this part, in accordance with the provisions of 24 CFR 570.205 570.206(h), 570.301 and 571.205 and 571.206(h). The costs of environmental reviews include any costs incurred in complying with any of the authorities mentioned at § 58.1(a)(3) of this part.

§ 58.10 [Reserved]

§ 58.11 Environmental review record.

Applicants shall prepare and maintain a written record of the environmental review pertaining to each project, which shall be designated the "Environmental Review Record," and shall be available for review as part of the project proposal at the request of interested agencies, groups or individuals. The environmental review record, shall be prepared and maintained in accordance with format I contained in HUD-399-CPD, Environmental Reviews at the Community Level, or such other format as may be acceptable to HUD. It shall include all material required by this part and format I and any other material rele

vant to the actions taken pursuant to this part.

§ 58.12 [Reserved]

§ 58.13 [Reserved]

§ 58.14 [Reserved]

§ 58.15 Steps to commence environmental review process.

The manner in which the applicant carries out the environmental review process, including the concurrent historic preservation review, and other reviews required by the authorities set forth in § 58.1(a) and the responsibilities assumed pursuant to § 58.5(a), is largely within the discretion of the applicant. However, the process should start as early in the planning and program development process as possible, should be completed while alternatives can still reasonably be considered and action taken to enhance environmental quality and shall include the following steps:

(a) *Determine existing conditions.* Existing environmental conditions and trends which are likely to occur absent implementation of the proposed project should be identified. Such information is an essential data base from which to assess and evaluate any effects of the project.

(b) *Identify environmental impacts.* An identification of the nature, magnitude, and extent of all environmental impacts of the project, whether beneficial or adverse, should be identified.

(c) *Examine identified impacts.* As to all environmental impacts of the proposed project which are identified:

(1) *Possible project modification.* Examine the project and consider ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize any adverse environmental impacts and enhance environmental quality. The examination should include consideration in light of the policies set forth in § 58.1(b) of both positive and negative effects of any such modification in relation to design, use, location, cost, and timing of the proposed project and its implementation.

(2) *Alternatives.* Examine alternatives to the project itself which would eliminate or minimize environmental impacts or enhance environmental quality. The examination should include consideration of both positive and negative effects of any such alternatives in relation to design, use, location, cost, and timing, and consideration of the effect of no project.

(d) *Level of clearance finding.* Having completed each of the foregoing steps that may be applicable in the environmental review process, the applicant shall make one of the two level of clearance findings set forth below:

(1) *Finding that request for release of funds for project is not an action which may significantly affect the quality of human environment.* If the environmental review process of the applicant results in a finding by the applicant that the request for release of funds for the proposed project is not an action which may significantly affect the quality of the human environment, then a document stating this finding and the facts and reasons supporting the finding shall be prepared by the applicant and included in the environmental review record. The document shall set forth sufficient information to demonstrate that the applicant has complied with each step in the environmental review process.

(2) *Finding that request for release of funds for project is an action which may significantly affect the quality of the human environment.* If an EIS is required by § 58.25, or if the environmental review process of the applicant results in a finding by the applicant that the request for release of funds for the proposed project is an action which may significantly affect the quality of the human environment, then a document stating this finding shall be prepared by the applicant and included in the environmental review record. An EIS is required for each action which may have such significant effect.

§ 58.16 Steps to complete environmental review process where level of clearance finding is that the request for the release of funds for project is not an action which may significantly affect the environment (no EIS).

The following procedure shall be followed where the level of clearance finding is that specified in § 58.15(d)(1):

(a) *Notice of finding of no significant effect.* The applicant shall prepare a notice of finding of no significant effect on the environment using format VI of HUD-399-CPD, Environmental Reviews at the Community Level, or such other format as may be acceptable to HUD.

(b) *Publication and dissemination.* The notice of finding of no significant effect on the environment shall be published and disseminated in the same manner as a notice of intent to file an EIS, as described as § 58.17(b) and will provide at least 15 days from the date of initial publication for public comment. The applicant may, at the same time of publication of the above notice, also publish the notice required by § 58.30(a). In such case, both notices shall be published and disseminated in the manner specified at § 58.17(b).

(c) *Completion.* Following publication and dissemination of the notice of finding of no significant effect on the environment and the expiration of any time fixed for comments, the environmental review process shall be complete, unless further proceedings are found by the applicant to be necessary, due to responses to such notice, or otherwise.

§ 58.17 Steps to complete environmental review process where level of clearance finding is that the request for the release of funds for project is an action which may significantly affect the environment (EIS required).

The following procedure shall be followed where the level of clearance finding is that specified in § 58.15(d)(2):

(a) *Notice of intent to file an EIS.* As soon as practicable, the applicant shall prepare a notice of intent to file an EIS using format V of HUD-399-CPD, Environmental Review at the Community Level, or such other format as may be acceptable to HUD.

(b) *Publication and dissemination.* Copies of the notice of intent to file an EIS shall be sent to the local news media, individuals and groups, including low- and moderate-income neighborhood groups, known to be interested in the applicant's activities, local, state, and Federal agencies, including the headquarters and appropriate Regional Office of the Environmental Protection Agency, The HUD Area Office, the appropriate A-95 clearinghouses, and others believed appropriate by the applicant. Such notice shall be published at least once in a newspaper of general circulation in the affected community. If such newspaper is of a type specializing in the publication of legal, real estate, commercial, or other notices, listings, and advertisements and is not of a type subscribed to and read by the general public as a source of news of general public interest, then such notice shall also be published at least once in easily readable type in the nonlegal section of a newspaper of general circulation, and where appropriate in a minority and non-English language newspaper of general circulation where such exists. The applicant also shall make reasonable efforts to provide the notices, in the form of press releases to neighborhood newspapers or periodicals serving low- and moderate-income neighborhoods.

(c) *Public hearings—Procedure.* Prior to the preparation and distribution of a draft EIS, the applicant shall determine whether or not it will conduct a hearing or hearings at which members of the public may be heard respecting the preparation and contents of the draft EIS. The applicant should also determine whether or not separate public hearings shall be held concerning the draft EIS, or whether such public hearings shall be combined

with other public hearings pertaining to the application of the applicant. All such public hearings concerning a draft EIS shall be preceded by a notice of public hearing, which shall be published and disseminated in the same manner as a notice of intent to file an EIS as set forth in § 58.17(b), at least 15 days prior to such hearing, and which shall: (1) State the date, time, place, and purpose of the hearing; (2) describe the project, its estimated costs, and the project area; (3) state that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard; (4) state the name and address of the applicant and the certifying officer of the applicant; and (5) state where the draft EIS can be obtained, whether in person or by mail, and any charges that may apply.

(d) *Public hearings—Factors to consider.* The determination of whether or not public hearings shall be held prior to distribution of a draft EIS or after such distribution, or at any other time during the environmental review process, shall be within the reasonable discretion of the applicant. In determining whether or not to hold such public hearings on environmental issues, either separately, or in combination with other proceedings relating to the application of the applicant, the following factors should be considered: (1) The magnitude of the projects, in terms of economic costs, the geographic area involved, and the uniqueness of size of commitment of the resources involved; (2) the degree of interest in or controversy concerning the projects, as evidenced by requests from the public, or from Federal, State, or local authorities, for information, or that a hearing be held; (3) the complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the applicant in carrying out its environmental responsibilities respecting the particular projects; (4) the extent to which public involvement has been achieved with respect to environmental concerns through other means, such as other public hearings, citizen participation in the development of the applicant's community development program and in formulation of its application, meeting with citizen representatives, and written comments on the particular projects.

(e) *Draft EIS.* A draft Eis shall be prepared in accordance with CEQ guidelines (40 CFR Part 1500). Copies of the draft EIS shall be sent by the applicant to the HUD Area Office, The HUD Regional Office, and the HUD Library, Eighth Floor, U.S. Department of Housing and Urban Development, Washington, D.C. 20410 (one copy each), to the U.S. Environmental Protection Agency (EPA) (five copies to the appropriate Regional Office and five copies to the Office of Federal Activities (OFA), Room 537, West Tower, 401 M Street SW., Washington, D.C. 20460), and simultaneously to Federal agencies whose areas of jurisdiction of law or special expertise are involved, to the applicable OMB-designated A-95 clearinghouses, to appropriate local agencies and entities, including local and area planning agencies, and groups or individuals known by the applicant to have an interest in the proposed action of the applicant. The CEQ guidelines (appendix II) set forth a listing of the Federal agency jurisdictions and special expertise. Copies shall also be made available to the public at the offices of the applicant and at public libraries and either copies, or summaries, of the draft EIS, must be made available, upon request, to persons who request them. Upon filing of the draft EIS with EPA, a notice that the applicant has prepared a draft EIS will be published by EPA in the FEDERAL REGISTER. Commencing on the date of such publication, there shall be a minimum review period of 45 days for the draft EIS, plus any extensions thereof initiated or granted by the applicant. A draft EIS must be on file with EPA at least 90 days prior to submission to HUD of a certification and request for release of funds for the particular projects pursuant to § 58.30.

(f) *Final EIS.* A final EIS shall be prepared in accordance with CEQ guidelines (40 CFR Part 1500). The final EIS must take into account and must respond to the comments received as the result of circulation of the draft EIS. The final EIS, including all comments received and the applicant's responses thereto, shall be filed with the HUD Area Office, the HUD Regional Office, and the HUD Library, Eighth Floor, U.S. Department of Housing and Urban Development, Washington, D.C. 20410 (one copy each), with EPA (five copies to the Regional Office and five copies to OFA/EPA as noted in (e) above) and simultaneously sent to all agencies and individuals who commented on the draft EIS, to the Environmental Protection Agency, A-95 clearinghouses, appropriate Federal, State, regional, and local agencies, and shall be made available to the public. A final EIS must be on file with EPA not less than 30 days prior to submission to HUD of a certification and request for release of funds for the particular project pursuant to § 58.30. If the final EIS is filed within 90 days after publication by EPA in the FEDERAL REGISTER of notice of receipt of the draft EIS, then the minimum 30-day period for review of the final EIS, and the 90-day period provided for in § 58.17(e) will run concurrently, to the extent that they overlap.

§ 58.18 Limitation on action pending clearance.

During the environmental review process and pending completion of the appropriate environmental clearance procedures, the applicant may not use any funds to take any action with respect to the project under review where such action might have an adverse environmental effect, would limit choices among competing alternatives, or might alter the environmental premises on which the pending clearance is based in such fashion that the validity of the conclusions to be reached would be affected. Except as to exempt activities under § 58.21, no Title I funds will be released for a project until the Secretary shall approve said release of funds and the related certification. (See §§ 58.30, 58.31, and 58.32.) No Title I funds may be used to reimburse project costs subject to this part which have been incurred in advance of the Secretary's approval of the release of such funds and the related certification.

58.19 Use of prior environmental reviews.

(a) *Procedures for updating EIS's.* The following procedures shall be followed when new information becomes available or circumstances change during the process of environmental reviews.

(1) If information arises after a draft EIS has been transmitted for circulation, but prior to the expiration date for receipt of comments, then a copy of any revision, amendment, addendum to the draft EIS, or other issuance, shall be transmitted to all parties to whom the draft EIS was transmitted, and to all parties who have commented thereon, and, where appropriate, the applicant shall extend the time for comment on the draft EIS.

(2) If the time for comments on the draft EIS has expired, but the final EIS has not been circulated, then any revision, amendment or addendum to the draft EIS shall be transmitted to all parties to whom the draft EIS was transmitted and to all parties who commented thereon, and a reasonable time for receipt of comments shall be fixed and allowed. The final EIS shall then reflect the additional factors and contain the comments and responses respecting them.

(3) If the final EIS has been circulated, then it shall be revised and reissued or an addendum thereto shall be prepared and distributed, as appropriate, to all parties to whom the final EIS was distributed and to others who have commented thereon. Such revision or addendum shall be subject to the same review and comment proce-

dures, including those respecting time, as the final EIS which is being updated.

(b) *Use of prior environmental impact statements.* Where any final environmental impact statement has been listed in the FEDERAL REGISTER for a project or where an areawide or similar broad scale final EIS has been so listed and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for that subsequent project if the conditions set forth below in subparagraphs (1), (2), (3), and (4) are met.

(1) The environmental review record contains a decision based on a finding that the proposed project is not a new major Federal action significantly affecting the quality of the human environment.

(2) In addition to the content prescribed elsewhere in this section, the decision shall include:

(i) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(ii) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(iii) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior environmental impact statement;

(iv) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(3) The prior final environmental impact statement has been kept current in the following ways:

(i) The EIS has been filed or updated within five (5) years; and

(ii) The EIS has been updated in accordance with significant revisions made to the underlying assumptions (covering at least those items in § 58.19(b)(2)(iii) above) as may be stated in the comprehensive plan or major elements thereof or other public policy revisions; and

(iii) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which the Department of Housing and Urban Development has determined to have significant environmental impact on the areas covered by the prior EIS.

(4) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

(c) *Requirement for new environmental review.* A project which is a continuation of a previously commenced activity or activities for which no environmental review has been completed or for which a prior EIS does not meet the requirements of § 58.19(b) must be subjected to an original or updated environmental review under this part. Such review shall be carried out with respect to the entire project to the extent that the entire project or portions of it could still be altered in light of environmental considerations.

§ 58.20 Financial settlement of urban renewal projects.

(a) *Project undertaken to facilitate early financial settlement.* If an applicant proposes to submit an application for financial settlement of an urban renewal project prior to substantial completion thereof pursuant to 24 CFR 570.804, which will be coupled with a proposal to use Title I grants pursuant to 24 CFR 570.801 for the purpose of facilitating such financial settlement, the latter proposal shall be deemed a project which is subject to the following additional requirements and conditions:

(1) Section 58.19(b) shall be inapplicable to such project;

(2) The environmental review for such project shall include an assessment of the environmental consequences of the financial settlement of the urban renewal project prior to substantial completion thereof;

(3) The applicant shall include the following sentence with the notice required by § 58.30(a):

Applicant will use the project to establish a financial basis, and will apply to the Secretary of HUD for financial settlement prior to substantial completion of the (*identify urban renewal project or NDP*) pursuant to 24 CFR 570.803 and 570.804.

(b) *Financial settlement prior to substantial completion of urban renewal project involving surplus of capital grant funds.* A financial settlement pursuant to 24 CFR 570.803 and 570.804 of an urban renewal project prior to substantial completion thereof which would result in a surplus of capital grant funds, $500 or more of which will be devoted to eligible Title I activities other than exempt activities under § 58.21 together with the proposed use(s) of the surplus shall be deemed a project and shall be subject to the following additional requirements and conditions:

(1) Section 58.19(b) shall be inapplicable to such project;

(2) The environmental review for such project shall include an assessment of the environmental consequences of the financial settlement of the urban renewal project prior to substantial completion thereof, and of the proposed use(s) of the surplus except any use(s) set forth in § 58.21;

(3) The application for financial settlement pursuant to 24 CFR 570.803 and 570.804 and use of the surplus resulting therefrom shall be treated as a request for release of funds and shall be subject to the requirements of subpart C of this part. However, the applicant shall use the following sentence in lieu of the first sentence set forth after the word "indicated" in § 58.30(a)(6):

(*Name of applicant*) will apply for financial settlement prior to substantial completion of (*identify urban renewal project or NDP*) and will undertake certain activities, all as described above, with surplus capital grant funds resulting from financial settlement.

(4) The surplus of capital grant funds resulting from such financial settlement may be used for a project which consists entirely of exempt activities under § 58.21 and/or activities which are subjected to environmental assessment pursuant to § 58.20(b) without further compliance with this part.

(c) *HUD environmental review of certain financial settlements.* Prior to acting upon any application submitted pursuant to 24 CFR 570.803 and 570.804 for financial settlement of an urban renewal project which is not substantially completed and for which the environmental consequences of financial settlement prior to substantial completion thereof have not been assessed by the applicant pursuant to § 58.20 (a) or (b), HUD shall itself conduct an assessment of the environmental consequences of the proposed financial settlement. However, if HUD finds that the applicant should have conducted an environmental assessment pursuant to § 58.20 (a) or (b) but failed to do so, the application for financial settlement shall be rejected and the applicant shall be required to comply with the environmental assessment requirements of § 58.20 (a) or (b) as appropriate, on a catchup basis, as a condition precedent to resubmission of its application.

(d) *Financial settlement after substantial completion of urban renewal project.* Notwithstanding any other provision of this part an assessment of the environmental consequences of financial settlement pursuant to 24 CFR 570.803 and/or 570.804, or an urban renewal project which is substantially completed, is not required. However, the applicant or HUD, as appropriate, shall prepare and maintain in its records a written finding as to the substantial completion of the urban renewal project.

§ 58.21 Exempt activities.

(a) The following activities (to the extent eligible for assistance under

Title I) may be, but are not required to be, treated as separate projects for the purpose of environmental review and are exempt from the requirements of this part:

(1) Environmental studies or assessments.

(2) Activities authorized by section 105(a)(12) of Title I and 24 CFR 570.205 and 571.205.

(3) Administrative costs as provided by 24 CFR 570.206 and 571.206.

(4) The payment, under authority of section 105(a)(10) of Title I, of principal and interest on outstanding urban renewal project loans as defined in 24 CFR 570.800(b) where such payment is not covered by § 58.20 or where such payment is not associated with a change in the related urban renewal project.

(5) The payment, under authority of section 108(c) of Title I, of principal and interest due on notes or other obligations guaranteed pursuant to section 108; and the repayment, under authority of section 108(e), due the United States as a result of guarantees made pursuant to section 108.

(b) Projects (see definition at § 58.3 and aggregation requirements of § 58.5(g)) which consist solely of the following kinds of activities shall also be exempt from the requirements of this part:

(1) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements eligible under §§ 570.201(c) and 571.201(c) and economic development activities authorized pursuant to §§ 570.203 and 571.203, subject to the following limitations:

(i) Acquisition for continued use. The article to be acquired is in place and will be retained in the same use that existed at the time of acquisition, without change in size, capacity, or character.

(ii) Acquisition, construction, reconstruction, or installation for replacement or upgrading. The article will replace or upgrade a substantially identical original article, without changing its use, size, capacity, or location (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving streets, and modification of buildings to provide access for elderly and handicapped persons).

(iii) Acquisition, construction, reconstruction, or installation to furnish or equip. The article will furnish or equip a site (other than furnishings and personal property prohibited by §§ 570.207(b)(2) and 571.207(b)(2)) where its placement and use is consistent with the use of that site and the action will not change the use, size, capacity, or character of the site (e.g., landscaping, street furniture, equipping established parks and playgrounds).

(2) Interim assistance eligible under § 570.201(f) and single purpose grants for imminent threats to public health or safety pursuant to § 570.432.

(3) Public services which:

(i) Are in support of a neighborhood strategy area program which consists entirely of activities exempt under this part; or

(ii) Are a continuation of services after completion of concentrated physical development activities of a neighborhood strategy area program pursuant to § 570.201(e)(1); or

(iii) Are provided by nonprofit or similar organizations in accordance with §§ 570.204(c)(4) and 571.204(c)(4) where the services are not part of a block grant funded physical development project.

(4) Rehabilitation of buildings and improvements as set forth in §§ 570.202 and 571.202, except paragraph (f), provided that:

(i) Unit density is not increased more than 20 percent; or

(ii) The project does not involve change in use from residential to nonresidential use or from one class of nonresidential use to another class of use; or

(iii) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(5) Combinations of the above categories.

(c) *Other program requirements not affected.* The exemption of activities or projects from environmental review procedures, pursuant to this section, does not relieve the applicant from compliance with the historic preservation requirements of § 58.24, the flood plains and wetland requirements of § 58.23, other authorities set forth at § 58.1(a)(3), the responsibilities assumed pursuant to § 58.5(a), and other applicable program requirements set forth at 24 CFR Parts 570 and 571. Documentation of compliance with these other requirements shall be contained in the environmental review record.

§ 58.22 [Reserved]

§ 58.23 Flood plains and wetlands.

Applicants must comply with the requirements of section 2(a) of Executive Order 11988 on flood plain management and with sections 2 and 5 of Executive Order 11990 on protection of wetlands. In so doing, applicants shall use the flood plain management guidelines prepared by the U.S. Water Resources Council and published February 10, 1978, at 43 FR 6030. The following procedures apply where either of the Executive orders is applicable.

(a) *Early public review.* In carrying out the requirements of section 2(a)(4) of Executive Order 11988 and of section 2(b) of Executive Order 11990, applicants shall publish a notice providing opportunity for early public review as soon as it is determined that a project is proposed to be located in a flood plain or wetland as defined by the respective Executive order. Such notice may be brief, but shall: (1) Identify the affected project; (2) set forth the facts and reasons for such proposed project; (3) state that the applicant has additional information on the proposal available and where such information may be obtained; (4) indicate that comments may be submitted to the applicant until a certain date which shall not be less than 15 days following its first publication and dissemination; (5) state the name and address of the applicant and the certifying officer of the applicant; and (6) be dated as of the time it is first published and disseminated. Copies of this notice shall be published and disseminated in the same manner as a notice of intent to file an EIS as described at § 58.17(b).

(b) *Notice of explanation.* The notice of explanation of why a project is proposed to be located in a flood plain as required by section 2(a)(2)(ii) and 2(a)(3) of Executive Order 11988 may be published and distributed at the same time as the notice required by § 58.30(a). In such cases the notices shall be published and disseminated in the manner specified at § 58.17(b).

(c) *Certification.* Submission by the applicant of the certification form required by § 58.30(c) shall also be considered certification that the requirements of Executive Orders 11988 and 11990 have been met by the applicant.

§ 58.24 Historic preservation.

Applicants must comply with the following requirements relating to the Preservation of Historic and Archeological Data Act of 1974, section 106 of the National Historic Preservation Act of 1966 and Executive Order 11593 whenever any property or district included in or found by the Secretary of the Interior pursuant to 36 CFR Part 800 to be eligible for inclusion in the National Register provided for by such Act, is in the boundaries, or within the vicinity of, a project which is to be funded, in whole or in part, by Title I funds.

(a) As part of the environmental review process each project shall be examined in accordance with the procedures for protection of historic and cultural properties (36 CFR Part 800) for the purpose of identifying any National Register and National Register-eligible properties and determining whether or not the project may affect the property. If the property is not affected by the project, the applicant shall so state, in the environmental review record.

(b) If the project will affect the property, the applicant, as part of the environmental review process, shall carry out the procedures set forth at 36 CFR Part 800.

§ 58.25 Projects requiring an EIS.

Preparation and dissemination of an EIS is required pursuant to § 58.15(d)(2) and for the following types of projects:

(a) *Residential projects.* Residential projects which would remove, demolish, convert, or substantially rehabilitate existing housing units, or which would construct or install housing units, or which would provide sites for housing units, in a quantity which equals or exceeds the applicable threshold as follows:

(1) Five hundred units for projects which are to be located outside a standard metropolitan statistical area (SMSA), or which are to be located within an SMSA county but beyond the urbanizing belt as defined in (3) below; or

(2) For projects which are to be located in the urbanizing belt of an SMSA county as defined in (3) below, the applicable threshold is that number in table 1 opposite the population range that fits the SMSA county in which the project is to be located;

(3) Urbanizing belts are identified as the delineated urbanized areas, as defined by the Bureau of the Census, plus a 2-mile zone around the outer boundaries of such areas. In cases where this 2-mile zone borders or includes a portion of an incorporated place lacking census tracts, or, when the 2-mile zone borders or includes a portion of a census tract, the next outer boundary of such incorporated place or census tract, may be used to delineate the outer limit of the urbanizing belt. In no case shall the urbanizing belt extend beyond the SMSA boundary.

Also, when an applicant can document that significant development has occurred beyond, but contiguous to, the defined urbanized area, HUD may approve redefinition of the urbanizing area plus a 2-mile belt beyond.

TABLE 1.—*Automatic EIS Thresholds Appicable to Housing Projects*

[For use in connection with § 58.25(a)]

SMSA county population range	Automatic threshold (units)
1,500,000 = plus	2,500
1,000,000 to 1,499,999	2.100
750,000 to 999,999	1,800
600,000 to 749,999	1,500
500,000 to 599,999	1,200
400,000 to 499,999	1,000
300,000 to 399,999	900
200,000 to 299,999	800
100,000 to 199,999	700
50,000 to 99,999	600
Under 50,000	500

NOTE.—The thresholds are applied to population figures for an SMSA county or county equivalent (independent city) based on the latest Bureau of the Census population estimates published in the P-25 Series of Current Population Reports. Although the initial application of these thresholds will be to population data for 1975, revised figures may be used as they become available for subsequent years. Where the population estimate for a given SMSA county indicates that there has been a loss in population since the last decennial census, the census figures from that decennial census may be used.

(b) *Hospitals and nursing homes.* Projects which provide a site or sites for hospitals and nursing homes shall utilize the thresholds set forth above in § 58.25(a) and table 1 therein, except that the term "bed" shall be substituted for the term "housing unit."

(c) *Water and sewer projects.* Water and sewer projects capable of supporting additional residential development in partially developed and undeveloped areas at an estimated scale which meets the applicable thresholds in table 1. For nonresidential or mixed used areas, that portion of the hydraulic capacity allocable to additional development shall be converted into the equivalent number of housing units, using standard flows per unit for design assumptions, and the results compared with table 1 for determining whether the threshold is met or exceeded. In determining net potential development, the applicant shall consider the basic design assumptions used in determining the hydraulic capacity of the project and the land uses contemplated within the service area. Allowances may be made for significant factors such as standby water capacity for fire flow or the storm water of combined sewers which do not directly support new development, and for present development which is to be connected to or served by the project. However, the development potential of existing open areas along water or sewer lines as well as for the target service area must be included in the threshold calculation. The threshold calculation shall also be documented in the environmental review record.

(d) *Transitional EIS requirement.* The system of flexible EIS thresholds set forth in (a), (b), and (c) above is applicable upon the effective date of these regulations. However, since some environmental reviews will be in process when this change in thresholds becomes effective, the following transition rules shall apply to those situations where an EIS would have been required under the previous thresholds but will not be required under the new flexible thresholds:

(1) Where a draft EIS has been published for public comment, the EIS process, including the issuance of a final EIS, shall be completed or the termination process described in (3) below shall be completed before the release of funds actions prescribed by § 58.30 are taken.

(2) Where a notice of intent to file an EIS has been published pursuant to § 58.17(a) but a draft EIS has not been published for public comment, the EIS process shall be completed or the termination process described in (3) below shall be completed before the release of funds actions prescribed by § 58.30 are taken.

(3) Where an EIS already in process is to be terminated, as provided by subparagraph (1) or (2) above, the applicant shall make the level of clearance finding set forth at § 58.15(d)(1) that a request for release of funds for the project is not an action which may significantly affect the quality of the human environment; shall give full consideration to all comments which may have been received in response to a notice of intent to file an EIS or in response to a draft EIS; shall comply with the requirements of § 58.16; and shall publish a notice of intent to terminate an EIS. Such notice shall be published and disseminated in the same manner as a notice of intent to file an EIS as described at § 58.17(b). The notice may be brief but shall identify the name, character, site, and location of the project for which further processing of an EIS is to be terminated, set forth the circumstances and reasons for discontinuing further EIS processing, indicate that the finding required by this subsection has been completed and indicate where and when it is available for public review, describe how any comments received in response to a notice of intent to file an EIS or in response to a draft EIS where considered, and state that the applicant proposes to submit the request for release of funds for the project under consideration in no less than fifteen (15) calendar days from the date the notice is published. This notice may be combined with the notices required by §§ 58.16(a) and by 58.30(a).

§ 58.26 [Reserved]

§ 58.27 Interaction of applicant with HUD and Federal agencies.

(a) *Interaction with agencies other than HUD.* Where a project is to be jointly funded by one or more Federal agencies other than HUD and by HUD under Title I, and the preparation of an EIS is required by this part, a single agency, either the applicant or

the other Federal agency, should assume responsibility as the "lead agency" for the preparation and clearance of an EIS, with the other agencies providing assistance. In the event that the regulations of none of the Federal agencies other than HUD require an EIS for such project, but the applicant determines under this part that an EIS is required then the applicant shall assume the "lead agency" role, or shall otherwise prepare an EIS, which shall comprehend the actions of the other Federal agency or agencies related to the project, as provided in the CEQ guidelines, 40 CFR 1500.7(b).

(b) *Joint reviews—Designation of lead agency.* All determinations respecting joint environmental review or designation of a "lead agency" to perform an environmental review shall be made and agreed upon between the applicant and any Federal agency involved, where practicable. In the event an applicant and a Federal agency are unable to reach such agreement, the applicant shall notify HUD, and HUD, with the advice and assistance of CEQ, will seek to obtain such agreement.

(c) *Interaction with HUD.* With respect to environmental matters, HUD has a dual relationship with applicants which applicants must recognize.

(1) *HUD as commenting agency.*

(i) HUD at all times reserves the right to review and comment upon the applicant's implementation of this part.

(ii) The applicant shall respond to HUD as a commenting and reviewing agency and interact with it in accordance with this part.

(2) *HUD responses to applicant's environmental review process.*

(i) In commenting on or otherwise responding to the applicant's implementation of this part, HUD will treat the applicant as if the applicant were another Federal agency. This means HUD may fully criticize the actions of the applicant, where deemed appropriate, and may make recommendations for modification of proposed actions or for new alternatives not addressed, which would enhance environmental quality or reduce adverse environmental impacts.

(ii) In all cases wherein HUD submits comments to the applicant respecting a draft EIS prepared by the applicant, such HUD comments and the response of the applicant thereto, shall be set forth in their entirety in the final EIS.

(iii) HUD may reject an applicant's environmental certification and request for release of funds for a project on grounds that the applicant's environmental process was defective or that the project is environmentally unsound. In either case, HUD shall notify the applicant of its possible rejection or denial and the reasons for it and may indicate means by which the procedural or environmental defect may be corrected. HUD's notification may be made through comments made in the course of review or by other written means. It will constitute formal notice that failure to correct the specified defect to HUD's satisfaction may result in HUD's rejection of the applicant's certification and request for the release of funds.

§ 58.28-58.29 [Reserved]

Subpart C—Releases of Funds for Particular Projects

§ 58.30 Release of funds upon certification.

An applicant which has completed all applicable environmental review and clearance requirements as provided in this Part with respect to a proposed project and which desires to submit a request to HUD for the release of Title I funds for the project, shall comply with the following:

(a) *Publication of notice.* An applicant, at least 7 calendar days prior to submitting the request for release of funds and certification, shall publish and disseminate, a notice to the public doing so in the same manner as a notice of intent to file an EIS, as described at § 58.17(b), using format VII of HUD-399-CPD, Environmental Reviews At The Community Level, or such other format as may be acceptable to HUD. An applicant may publish this notice at the same time as that required by § 58.16(b).

(b) *Request for release of funds.* A request for release of funds pursuant to this part shall be addressed to the HUD officer authorized to receive the application of applicant, shall be executed by the certifying officer and may be submitted with or as part of an application, or at any time after submittal of an application. Such request shall in all cases be accompanied by the certification of the applicant as stated at § 58.30(c) and shall:

(1) State the name and address of the applicant;

(2) State that the applicant requests the release of funds for particular projects, identify such projects; and

(3) Be accompanied by the certification described in paragraph (c).

(c) *Certification.* A certification pursuant to this part shall be addresses to the HUD officer authorized to receive the application of applicant, and shall:

(1) State the name and address of the applicant and be executed by the certifying officer;

(2) Specify that the applicant has fully carried out its responsibilites for environmental review decisionmaking and action pertaining to the projects named in the request for release of funds;

(3) Specify the levels of all environmental clearances carried out by the applicant in connection with each project pertaining to the certification;

(4) Specify the dates upon which any statutory or regulatory time period for review, comment, or other response or action in regard to each such environmental clearance commenced and has expired, or will expire, and that with the expiration of each statutory or regulatory time period the applicant is in compliance with the requirements of this part;

(5) Specify that the certifying officer is authorized to consent to assume the status of a responsible Federal official, under NEPA, insofar as the provisions of NEPA apply to the HUD responsibilities for environmental review, decision making and action assumed and carried out by the applicant, and that the certifying officer by so consenting, such officer assumes the responsibilities, where applicable, for the conduct of environmental reviews, decision making, and action as to environmental issues; preparation and circulation of draft and final EIS's; and assumption of lead agency responsibilities for preparation of such statements on behalf of Federal agencies other than HUD when such agencies consent to such assumption;

(6) Specify that the certifying officer is authorized to consent, on behalf of the applicant, to accept the jurisdiction of the Federal courts, for the enforcement of all responsibilities referred to in § 58.30(c)(5); and that the certifying officer so consents on behalf of the applicant and himself in his official capacity only;

§ 58.31 Objections to release of funds.

HUD shall not approve the release of funds for any project until fifteen (15) calendar days have elapsed from the time HUD shall have received the applicant's request for the release of such funds and the certification pertaining thereto or the time specified in the notice published pursuant to § 58.30(a), whichever shall be the later time. Applicants shall not commit any funds which are the subject of any request for the release of funds to any project rior to HUD's approval of such request. Any person or agency, including HUD, may object to an applicant's request for the release of funds and the certification pertaining thereto, but HUD will consider such objections only if the conditions and procedures set forth in this section are satisfied. HUD can refuse the request and certification on any grounds set forth in paragraph (b) or (e) of this section. Any decision by HUD approving or disapproving the request for the release of funds and the certification pertaining thereto shall be final.

(a) *Time for objecting.* HUD must receive objections within fifteen (15) days from the time HUD shall have received the applicant's request for the release of funds and the certification pertaining thereto, or the time specified in the notice published pursuant to § 58.30(a), whichever shall be the later time.

(b) *Permissible bases.* (1) That the certification was not, in fact, executed by the certifying officer of the applicant;

(2) That the applicant has failed to make one of the two level of clearance findings pursuant to § 58.15(d), or to make the decision required by § 58.19(b), for the project, as applicable;

(3) That with regard to a project for which the level of clerance finding in § 58.15(d)(1) was made, the applicant has omitted one or more of the steps set forth at: § 58.15(a); § 58.15(b); § 58.15(c)(1); § 58.15(c)(2); § 58.16(a); or § 58.16(b);

(4) That with regard to a project for which the level of clearance finding in § 58.15(d)(2) was made, the applicant has omitted one or more of the steps set forth at: § 58.17(a); § 58.17(b); § 58.17(c) only if applicant has decided to conduct a public hearing as a part of its environmental review of the project; § 58.17(e); or § 58.17(f);

(5) That with respect to a property listed on the National Register of Historic Places, or found to be eligible by the Secretary of the Interior pursuant to 36 CFR Part 800 for inclusion in such Register, and which is affected by the project, no opportunity was given to the Advisory Council on Historic Preservation or its Executive Director to review the effect of the project on the property in accordance with the procedures set forth at 36 CFR Part 800; or,

(6) That with respect to a project for which the applicant has decided that § 58.19(b) applies, the applicant has failed to include in the environmental review record the written decision required pursuant to § 58.19(b) or that the applicant's decision is not supported by facts specified by the objecting party;

(7) That another Federal agency has submitted a written finding to HUD that an applicant's project is unsatisfactory from the standpoint of public health or welfare or environmental quality. This finding shall set forth at least the following:

(i) The Federal agency basis for stating that the applicant's project will have potentially adverse environmental impacts which would cause the violation of national environmental standards or policies of would be of such a severity, geographical scope, duration, or importance as precedent as to warrant HUD's disapproving the release of funds and the certification pertaining thereto;

(ii) The Federal agency's consultations with the applicant and the basis for failure to reach a satisfactory agreement;

(iii) Factual evidence that the project is environmentally unsound;

(iv) Recommendations for mitigation, alternatives, or other courses of action needed to make the project environmentally acceptable.

(c) *Public and agency objections.* The only bases upon which HUD will consider the objection of any person or agency to the certification of an applicant, or to the approval by HUD of such certification, are set forth at § 58.31 (b) and (e). Other objections will not be considered by HUD; but may be addressed to the applicant, and the certifying officer of the applicant.

(d) *Procedure.* A person or agency objecting to an applicant's request for the release of funds and the certification pertaining thereto shall:

(1) Submit such objection in writing, to the HUD officer authorized to receive the application of the applicant;

(2) Specify the name, address, and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of the agency;

(3) Be dated when signed;

(4) Specify the bases for objection, and the facts or legal authority relied upon in support of the objection;

(5) Indicate that a copy of the objections has been mailed or delivered to the chief executive officer of the applicant.

(e) *HUD-initiated objections.* HUD may object to an applicant's request for release of funds and the certification pertaining thereto and may disapprove such request upon any of the following bases:

(1) Those listed in § 58.31(b);

(2) That the environmental review process is defective;

(3) That the project is environmentally unsound;

(4) That the applicant has not mitigated or corrected the procedural or environmental quality defects identified by HUD in accordance with § 58.27.

§ 58.32 Effect of approval of certification.

(a) NEPA responsibilities of HUD. The approval by HUD of the certification of an applicant is deemed to satisfy the responsibilities of the Secretary under NEPA insofar as those responsibilities relate to the applicant and releases of funds under Title I for projects which are covered by such certification.

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental assessments covered by an approved certification shall deal with the applicant and not with HUD. It shall be the policy of HUD, following the approval of a certification, not to respond to inquires and complaints seeking such redress, and only to refer such inquiries and complaints to the applicant and the certifying officer of the applicant. Other remedies for noncompliance, in addition to those stated in this part, are set forth at 24 CFR 570.913.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).)

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PATRICIA ROBERTS HARRIS,

Secretary of Housing and Urban Development.

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